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May 19 – June 8, 2023

FCC Record

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U.S. GOVERNMENT
INFORMATION
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FCC Record Volume 38, No. 6, Pages 4,747 to 5,602, May 19 – June 8, 2023



FEDERAL COMMUNICATIONS COMMISSION

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Federal Communications Commission Record

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

In the Matter of	)	
	)	
Luis Martinez	)	File No.: EB-FIELDNER-22-00033924
York, Pennsylvania	)	
	)	
	)	

CITATION AND ORDER

Surveillance Devices Causing Harmful Interference to Fixed Wireless Broadband Communications

Adopted: May 18, 2023 **Released: May 19, 2023**

By the Regional Director, Region One:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation), notifies Luis Martinez (Martinez) that he operated radio frequency devices at his residence that caused harmful interference to a Commission licensee. We therefore direct Martinez to immediately cease and desist from using the devices and to comply with Federal Communications Commission (Commission or FCC) interference regulations. If Martinez fails to comply with these laws, he may be liable for significant fines up to $23,727 per day.

2. ***Notice of Duty to Comply with the Law***: We issue this Citation pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.[1] Accordingly, Martinez is hereby on notice that he must comply with sections 301 and 333 of the Act[2] and sections 15.5(b) and 15.5(c) of the Commission's rules.[3] If Martinez subsequently engages in any conduct described in this Citation — including specifically any violation of sections 301 and 333 of the Act or sections 15.5(b) or 15.5(c) of the Commission's rules — he may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following the Citation.[4] Martinez should take immediate steps to come into compliance with the Commission's rules, including eliminating the interference.

3. ***Notice of Duty to Provide Information***: Pursuant to sections 4(i), 4(j), and 403 of the Act,[5] we direct Martinez to respond in writing, within thirty (30) calendar days after the release date of this Citation, to the questions and requests for documents set out in Section IV of this Citation.

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[1] *See* 47 U.S.C § 503(b)(5).

[2] 47 U.S.C. § 301.

[3] 47 CFR § 15.5(b)-(c).

[4] *See* S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent*.") (emphasis added).

[5] 47 U.S.C. §§ 154(i), (j), 403.

II. BACKGROUND

4. The Commission is charged with protecting licensed radio operations from harmful interference. Harmful interference to wireless providers, such as T-Mobile USA, Inc. (T-Mobile), is particularly problematic in that it can interfere with 911 service and undermines the Commission's ability to manage the nation's radio spectrum. On May 25, 2022, T-Mobile filed a complaint with the Commission concerning interference to its cellular communication system operating in the 2500 MHz band. T-Mobile noted that the interference appeared to be emanating from a surveillance camera system located at a single-family home in York, Pennsylvania (Martinez Residence). T-Mobile contacted the FCC to notify it that the residents of that building failed to take corrective action after being previously contacted by T-Mobile. T-Mobile uses the 2500 MHz band to provide wireless service to business and residential customers.

5. On June 8, 2022, agents from the Enforcement Bureau's Columbia, MD, Field Office (Columbia Office) went to York, Pennsylvania in response to T-Mobile's complaint about interference. Using direction-finding techniques, the agents confirmed that the source of the interference was a device or devices located at the Martinez Residence. Agents observed potential sources of the interference—security cameras at both the front of the rear of the Martinez Residence.

6. On June 15, 2022, after agents traced the interfering signal to surveillance devices located in a tree at the rear of the Martinez Residence, the Enforcement Bureau (Bureau) issued a warning letter to Martinez.[6] The letter informed Martinez that that unauthorized radio emissions were emanating from his residence causing harmful interference to T-Mobile's licensed operations and requested that he take steps to identify the source and eliminate the interference.[7] On July 26, 2022, T-Mobile provided the Bureau's agents with a video containing instructions on how to change the cameras' settings to a mode that T-Mobile believed would not cause interference. The agents shared the video with Martinez, who acknowledged disconnecting the camera at the rear of his residence after receiving the warning letter. However, Martinez did not disconnect two other surveillance cameras at his residence and, according to T-Mobile, the interference continued.

7. On October 12, 2022, an agent from the Columbia Office contacted Martinez in response to T- Mobile's report that the interference had not been resolved. Martinez claimed to have followed T-Mobile's instructions and changed the remaining two cameras' settings in an attempt to end the interference. The agent informed Martinez that T-Mobile reported that the interference, nevertheless, still persisted. The agent also warned Martinez that if the Commission determined that the interference was still caused by his surveillance camera system, he could face fines for continued operation. In response to this warning, Martinez agreed to an on/off test to determine whether his equipment continued to be the cause of the interference.

8. On October 17, 2022, agents from the Columbia Office returned to the Martinez Residence to conduct the on/off test. They observed that when the camera system base was turned off, the interfering signal disappeared. The agents then confirmed with T-Mobile personnel that the interference had ceased after the surveillance system was deactivated and concluded that the system's cameras were, therefore, the source of the interference to T-Mobile. A T-Mobile representative gave Martinez further instructions on methods to potentially eliminate the interference, but the agents warned Martinez again that if the interference was not eliminated, he would have to deactivate or replace his surveillance system. On October 25th, 2022, an agent called Martinez to inform him that T-Mobile had confirmed that the interference continued and that he would have to cease operating his surveillance system.

9. On November 7, 2022, and February 22, 2023, agents from the Columbia Office returned to York, Pennsylvania to conduct on-scene investigations in response to continuing complaints from T-

[6] *Luis Martinez,* Warning for Interference to Licensed Communications, (July 15, 2022) (on file in EB-FIELDNER-22-00033924).

[7] *Id.*

Mobile that the interference to its cellular service had not been resolved. Using direction-finding techniques, the agents confirmed that the surveillance cameras located at the Martinez Residence were still the source of the interference to T-Mobile's cellular network.

III. APPLICABLE LAW AND VIOLATIONS

10. The Commission is charged with protecting licensed radio operations from harmful interference. Harmful interference to wireless providers, such as T-Mobile, is particularly problematic in that it can interfere with 911 service and undermines the Commission's ability to manage the nation's radio spectrum. Section 333 of the Act states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government."[8] Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio"[9] within the United States or its territories without a license granted by the Commission. Part 15 of the Commission's rules provides an exception to this general section 301 license requirement and sets forth conditions under which devices may operate without an individual license.[10] Section 15.5(b) of the Commission's rules requires that "[o]peration of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused . . . ."[11] Similarly, section 15.5(c) of the Commission's rules states that the "operator of a radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected."[12] Section 15.3(m)'s definition of harmful interference includes "[a]ny emission, radiation or induction that . . . obstructs or repeatedly interrupts a radiocommunications service operating in accordance with this chapter."[13]

11. We find that Martinez violated sections 301 and 333 of the Act and sections 15.5(b) and 15.5(c) of the Commission's rules by operating devices causing harmful interference to T-Mobile's licensed operations, by failing to promptly eliminate the interference upon notification by a Commission representative, and by failing to cease operating the devices upon notification by a Commission representative that the devices were causing harmful interference.[14]

IV. REQUEST FOR INFORMATION

12. Pursuant to sections 4(i), 4(j), and 403 of the Act, we direct Martinez to confirm in writing, within thirty (30) days of the release of this Citation, that he has taken the corrective measures to eliminate the harmful interference, as well as provide a timeline for any pending corrective actions. Failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject Martinez to additional sanctions.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

13. Martinez must respond to this Citation within 30 calendar days from the release date of this Citation. Martinez may respond by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to Martinez's residence. The Commission Field Office nearest to Martinez's residence is located in Columbia, Maryland.

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[8] 47 U.S.C. § 333.

[9] 47 U.S.C. § 301.

[10] 47 CFR § 15.1 *et seq.*

[11] 47 CFR § 15.5(b).

[12] 47 CFR § 15.5(c).

[13] 47 CFR § 15.3(m); *see also* 47 CFR § 2.1(c).

[14] 47 CFR § 15.5(b)-(c).

14. If Martinez requests a teleconference or personal interview, please contact David C. Dombrowski, by telephone at: (301) 725-1996. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Martinez prefers to submit a written response with supporting documentation, he must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph 15 below.

15. All written communications should be sent to the mailing and e-mail address below and reference File Number EB-FIELDNER-22-00033924.

> Federal Communications Commission
> EB Columbia Regional Office
> Attn: David C. Dombrowski
> 9050 Junction Drive
> Annapolis Junction, Maryland 20701
> FIELD@FCC.GOV
> **Re: EB-FIELDNER-22-00033924**

16. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Martinez should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Martinez should allow at least five business days advance notice; last minute requests will be accepted but may be impossible to fill. Martinez should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau:

> For sign language interpreters, CART, and other reasonable accommodations:
> (202) 418-0530 (voice), (202) 418-0432 (tty); and
>
> For accessible format materials (braille, large print, electronic files, and audio format):
> (202) 418-0531 (voice), (202) 418-7365 (tty).

17. We advise Martinez that it is a violation of section 1.17 of the Commission's rules[15] for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

> (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and
>
> (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

18. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.[16]

19. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

20. Finally, we warn Martinez that, under the Privacy Act of 1974,[17] Commission staff will use all relevant material information before it, including information disclosed in interviews or written

[15] 47 CFR § 1.17.

[16] 18 U.S.C. § 1001.

[17] 5 U.S.C. § 552a(e)(3).

statements, to determine what, if any, enforcement action is required to ensure Martinez's compliance with the Act and the Commission's rules.[18]

VI. FUTURE VIOLATIONS

21. If, after receipt of this Citation, Martinez again violates sections 301 or 333 of the Act, and/or sections 15.5(b) or 15.5(c) of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The Commission may impose forfeitures not to exceed $23,727 for each such violation or each day of a continuing violation, and up to $177,951 for any single act or failure to act.[19] The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.[20] Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.[21] In addition, future violations may subject Martinez to seizure of equipment through *in rem* forfeiture actions,[22] as well as criminal sanctions, including imprisonment.[23]

VII. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act, 47 U.S.C. § 154(i), (j), Luis Martinez must cease and desist from causing harmful interference in violation of section 333 of the Act, 47 U.S.C. § 333, and operating without authorization in violation of section 301 of the Act, 47 U.S.C. § 301, and sections 15(b) and 15(c) of the Commission's rules, 47 CFR § 15.5(b)-(c).

23. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,[24] Luis Martinez must provide the written information requested in paragraph 12 above. Luis Martinez must support his responses with an affidavit or declaration under penalty of perjury, signed and dated by Luis Martinez, attesting personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with section 1.16 of the Commission's rules and be substantially in the form set forth therein.[25] The Commission must receive the response within thirty (30) calendar days of the release date of this Citation and Order.

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[18] 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.

[19] *See* 47 U.S.C. § 503; 47 CFR § 1.80(b). These amounts are subject to further adjustment for inflation.

[20] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

[21] *See supra* paragraphs 4-9.

[22] *See* 47 U.S.C. § 510.

[23] *See* 47 U.S.C. §§ 401, 501.

[24] 47 U.S.C. §§ 154(i), (j), 403.

[25] 47 CFR § 1.16.

24. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Luis Martinez at his residence in York, Pennsylvania.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director, Region One
Enforcement Bureau
Federal Communications Commission

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

In the Matter of	)	
	)	
RevTel Communications, LLC	)	File No.: EB-IHD-20-00031703
	)	NAL/Acct. No.: 202332080028
	)	FRN: 0022363006

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 19, 2023 **Released: May 19, 2023**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. Under the rules and orders of the Federal Communications Commission (FCC or Commission), telecommunications service providers and certain telecommunications providers (collectively, service providers) are required to file Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC) in furtherance of the Universal Service Fund (USF) and other regulatory requirements implemented by the FCC pursuant to the Communications Act of 1934, as amended (Act). USAC and the administrators of the Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), and the North American Numbering Plan (NANP) rely on information filed in the Worksheets to determine, as prescribed in Commission rules, each service provider's equitable contributions responsibilities for the USF, TRS Fund, LNP, and NANP. Likewise, the Commission relies on the information filed in Worksheets to assess equitable federal regulatory fees owed by service providers.

2. To ensure that information in Worksheets submitted by service providers is accurate and complete, the Commission's rules grant USAC the authority to verify the information and require service providers to maintain records to enable verification. Service providers are required to submit the records to USAC and the Commission upon demand. Failure to submit required documentation, or failure to maintain and provide the documentation needed to verify the Worksheets, undermines the Commission's efforts to maintain the USF, TRS Fund, LNP, NANP, and federal regulatory fee cost recovery requirements. In this case, RevTel Communications, LLC, formerly RevTel, LLC (RevTel or Company) failed repeatedly to respond to directives from USAC to provide documentation supporting information reported in the Company's Annual Worksheets for 2020, 2021, and 2022. We therefore propose in this Notice of Apparent Liability for Forfeiture (NAL) a forfeiture penalty of $100,000 against RevTel for its failure to cooperate with documentation requirements in apparent violation of section 54.711(a) of the Commission's rules.[1]

II. BACKGROUND

A. Legal Framework

3. The Act codifies Congress's commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[2] In implementing this Congressional mandate,

[1] *See* 47 CFR § 54.711(a).

the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user telecommunications revenues.[3] The Commission also requires certain providers of interstate telecommunications to contribute to the USF.[4]

4. The Commission has established specific procedures to administer the USF. Each service provider required to contribute to the USF is required to file annually an FCC Form 499-A, also known as the Annual Worksheet,[5] and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.[6] USAC, as the Commission's administrator of the USF, uses the revenue projections submitted in the Quarterly Worksheets to determine and invoice each service provider's monthly universal service contribution amount.[7] Monthly USF contributions that were invoiced based on projected revenues reported in a service provider's Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the service provider's Annual Worksheet.[8] Each service provider's Annual Worksheet revenues for 2019 through 2021 were respectively due by April 1 of 2020, 2021, and 2022.[9] The Commission's rules require that service providers report accurate information in the Annual Worksheets.[10] The Commission's rules also

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[2] 47 U.S.C. § 254(d).

[3] 47 CFR § 54.706(b).

[4] *Id.* § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."). According to its 2022 Annual Worksheet filing, RevTel provides competitive local exchange carrier (CLEC) services, and is therefore subject to the Worksheet filing and contribution requirements established under the FCC's rules. *See id.*; https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=829664 (last visited May 10, 2023). A CLEC is a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user. *See* 47 CFR § 61.26(a)(1). RevTel is also an interconnected Voice over Internet Protocol (VoIP) service provider. *See https://www.itvoice.com/revtel* (last visited May 10, 2023)*; https://www.itvoice.com/voice* (last visited May 10, 2023); *see also Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF), *petition for review denied, and vacated in part on other grounds*, *Vonage Holding Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

[5] *See* 47 CFR § 54.711; *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*). Within 30 days of beginning to provide service, new service providers must register with the Commission by obtaining an FCC registration number (FRN) from CORES and obtaining a Filer ID from USAC's E-File system. *E.g.*, *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1372 (WCB 2020) (*2020 Annual Worksheet Instructions*).

[6] *See* 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

[7] *E.g.*, *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1409.

[8] *See Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001); 47 CFR § 54.711.

[9] *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1373; *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 13671, 13693 (WCB 2020) (*2021 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 36 FCC Rcd 14176, 14200 (WCB 2021) (*2022 Annual Worksheet Instructions*).

[10] 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: "I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year." *E.g.*, 2020 FCC Form 499-A, Line 605. While the Commission permits revisions to Worksheets in certain circumstances, *see 2020 Annual Worksheet Instructions*, 35

(continued…)

explicitly warn service providers that the failure to file timely and accurate Worksheets or submit timely USF payments potentially subjects them to enforcement action.[11]

5. In order to confirm the accuracy of service providers' Worksheet filings, section 54.711(a) of the Commission's rules provides that the Commission and USAC have the authority to verify any information contained in Annual and Quarterly Worksheets.[12] Filers are required to maintain records and documentation to justify the information reported in the Worksheets, including the methodology used to determine revenue projections, for a period of three years, and to provide it to the Commission or USAC upon request.[13] The recordkeeping requirement is necessary to verify that contributors report correct information in the Worksheets.[14] The Commission and USAC can review records and documentation underlying revenue reported in a service provider's Worksheets to determine whether the contributor is properly reporting revenues, and thus contributing its fair share to the costs of the universal service program and other cost recovery requirements implemented under the Act.[15]

6. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."[16] To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.[17] The Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.[18] Such services provide telephone access to a significant number of Americans who without it might not be able to make calls to or receive calls from voice-telephone users.[19] Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, certain service providers[20] must contribute to the TRS Fund based on their interstate end-user revenues.[21] Under the

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FCC Rcd at 1373-74, that opportunity does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information and belief. *See* 2020 FCC Form 499-A, Line 605.

[11] 47 CFR § 54.713.

[12] *Id.* § 54.711(a); *see also id.* § 54.707 (providing that USAC has the authority to audit contributors reporting data to USAC).

[13] *Id.* § 54.711(a). Additionally, under section 54.706(e) of the Commission's rules, any entity required to contribute to the USF shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the universal service Commission's rules. These records include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. *Id.* § 54.706(e).

[14] *Federal-State Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 25791, para. 34 (2002).

[15] *See* 47 CFR §§ 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B) (establishing requirements to file Worksheets so that administrators can assess payment requirements for, respectively, federal regulatory fees, LNP, NANP, USF, and TRS Fund).

[16] 47 U.S.C. § 225(b)(1).

[17] *See Telecommunications Relay Servs. & the Ams. with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301 para. 7 (1993).

[18] *See Telecommunications Relay Servs. and Speech-to-Speech Servs. for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143 para. 5 (2000).

[19] *Id.*

[20] Every carrier providing interstate or intrastate telecommunications services, including interconnected VoIP service providers, 47 CFR § 64.601(b), and providers of non-interconnected VoIP service must contribute to the TRS Fund. *Id*. § 64.604(c)(5)(iii)(A).

Commission's rules, the TRS Fund administrator, Rolka Loube Saltzer Associates, LLC d/b/a Rolka Loube (Rolka Loube), uses Annual Worksheet filings to determine each service provider's annual or monthly TRS Fund contribution amounts.[22]

7. Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.[23] Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and numbering portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[24] In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission's rules.[25] Under the Commission's rules, service providers[26] must contribute to the costs of numbering administration and LNP on the basis of their end-user telecommunications revenues.[27] The NANP administrator's billing and collection agent, Welch LLP (Welch),[28] and the LNP administrator, Telcordia Technologies, Inc.

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[21] *Id*. Under the Commission's rules, service providers must contribute at least $25.00 per year, and service providers whose annual contributions are less than $1,200.00 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, service providers are permitted to divide their contributions into 12 equal monthly payments. *Id*. § 64.604(c)(5)(iii)(B).

[22] *Id*. Rolka Loube replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. *See Interstate Telecommuns. Relay Serv. (TRS) Fund Adm'r Transition*, Public Notice, 26 FCC Rcd 8436 (2011).

[23] 47 U.S.C. § 251(e)(1).

[24] *Id.* § 251(e)(2). "Number Portability" means "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." *Id.* § 153(37). The inability of customers to retain their telephone numbers when changing local service providers would hamper the development of local competition. *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd. 11701, 11702, para. 3 (1998), *aff'd*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd. 2578 (2002).

[25] 47 CFR §§ 52.17, 52.32.

[26] All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration and LNP. *See id.* §§ 52.17, 52.32.

[27] *See id.* § 52.17(a) ("Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually [with] such contributions to be no less than twenty-five dollars ($25)."); *id.* § 52.32(a) (service providers that have no intrastate, interstate, or international end-user telecommunications revenues derived from providing telecommunications service in areas a regional database serves must pay $100 contributions for LNP, and if service providers derive intrastate, interstate, or international end-user telecommunications revenues in areas a regional database serves, the service providers must pay a charge that recovers the remaining shared costs of long-term number portability attributable to each service provider on a proportional basis.)

[28] In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. New Release, Fed. Commc'ns Comm'n, Federal Communications Commission Selects Welch & Co., LLP as the Next North American Numbering Plan Billing & Collection Agent (WCB Apr. 12, 2004), https://www.fcc.gov/document/federal-communications-commission-selects-welch-company-llp-next. In 2007, the billing and collection agent changed its name to Welch LLP. *See* https://welchllp.com (last visited May 10, 2023); *see also Welch LLP celebrates 100th anniversary in Ottawa*, OTTAWA BUSINESS JOURNAL (Feb. 8, 2018), https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa.

d/b/a iconectiv (iconectiv),[29] respectively use Annual Worksheet filings to determine service providers' required payments for NANP and LNP administration.[30]

8. The Act directs the Commission to "assess and collect regulatory fees to recover the costs of carrying out" the functions of the Commission,[31] including "enforcement activities, policy and rulemaking activities, user information services, and international activities."[32] Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.[33] Service providers[34] must pay federal regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.[35]

9. Because USAC, Rolke Loube, iconectiv, Welch, and the Commission rely on Worksheets to determine respective payment requirements for administration of the USF, TRS Fund, LNP, NANP, and federal regulatory fees, the accuracy and timeliness of Worksheet filings are vital. The Commission, through USAC, must be able to verify that each service provider is compliant with the Commission's rules, including being able to review documents that support the accuracy of information reported in Worksheets.[36] When a service provider underreports its revenues in its Worksheets, and then exacerbates the problem by not complying with USAC's attempts to verify the reported revenues through supporting documentation, the service provider could prevent administrators from fully invoicing the service provider for its USF, TRS Fund, LNP, NANP, and federal regulatory fee payment obligations.[37] A contributor's failure to comply with the Worksheet filing and verification functions can impede the very purpose for which Congress enacted section 254(d)—to ensure that every required contributor to the USF "contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[38] The effects on the administration of TRS, LNP, NANP and on the Commission's assessment of federal regulatory fees are similar. Indeed, a service provider that impedes the Commission and USAC from verifying the revenue information submitted in Worksheets can evade its federal obligations to contribute fully toward the vital programs linked to the reporting rules.[39] As a consequence of this evasion, other service providers carry an unfair burden of funding the USF and the other federal regulatory requirements arising

[29] *See Telcordia Techs., Inc. Petition to Reform Amendment 57 & to Order a Competitive Bidding Process for No. Portability Admin.*, Order, 31 FCC Rcd 8406 (2016) (approving the recommendation of the North American Numbering Council (NANC) that iconectiv serve as the next LNP administrator).

[30] 47 CFR §§ 52.17(b), 52.32(b).

[31] 47 U.S.C. § 159(a); *see also id.* § 156(a).

[32] *2020 Annual Worksheet Instructions*, *supra* note 5, 35 FCC Rcd at 1365.

[33] *See* 47 CFR §§ 1.1152–1.1156, 1.1157(b) (addressing federal regulatory fee requirements for wireless radio, mass media, common carrier, cable television, and international service providers).

[34] *See* https://www.fcc.gov/licensing-databases/fees/regulatory-fees (identifying Commission licensees and other regulated entities that must pay federal regulatory fees) (last visited May 10, 2023).

[35] *See* 47 CFR § 1.1154.

[36] *See id.* § 54.711(a); *see also id*. § 54.706(e).

[37] *See id.* § 54.711(a); *Telseven NAL*, *supra* note 5, 27 FCC Rcd at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, *supra* note 5, 31 FCC Rcd at 1636, para. 20; *Telrite Corp*., Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241-42, para. 24 (2008), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

[38] 47 U.S.C. § 254(d).

[39] *See, e.g.*, *Telseven NAL*, *supra* note 5, 27 FCC Rcd at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), *consent decree adopted,* Order, 29 FCC Rcd 2593 (2014); *Local Phone Services, Inc*., Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006) (*LPSI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008).

under the Act.[40] Delinquent service providers obtain an unfair competitive advantage over service providers that comply with the reporting provisions, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments, required under the Commission's rules.[41]

B. Factual Background

10. On October 23, 2020, USAC referred Slappey Telephone, Inc. d/b/a Slappey Communications (Slappey Telephone), Slappey Communications, LLC (Slappey Communications), and BMP Slappey Holdco, LLC (BMP) to the Enforcement Bureau (Bureau) for investigation of these companies' repeated failures to comply with the document production requirements under section 54.711(a) of the Commission's rules.[42] On December 17, 2020, the Bureau issued a Letter of Inquiry (LOI) to Slappey Telephone, Slappey Communications, and BMP, concerning compliance with requirements arising under the Act and the Commission's rules.[43] Slappey Telephone, Slappey Communications, and BMP responded to the Bureau's LOI on January 11, February 5 and 6, and March 8, 2021.[44] In the January 11, 2021 LOI Response, Slappey Telephone, Slappey Communications, and BMP identified RevTel and Volstate, LLC (Volstate), a Tennessee limited liability company, as wholly-owned subsidiaries of BMP.[45] Slappey Telephone, Slappey Communications, and Volstate then requested USAC deactivate them from the Worksheet filing requirements on the basis that these companies no longer provided telecommunications or telecommunications service, and USAC approved the requests effective as of December 31, 2021.[46]

11. RevTel is a Texas limited liability company that is headquartered in Birmingham, Alabama.[47] The Tennessee Public Service Commission granted authority to RevTel to operate as a CLEC

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[40] *See Telseven NAL*, *supra* note 5, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

[41] *See Telseven NAL*, *supra* note 5, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

[42] *See* 47 CFR § 54.711(a); Letter from Fred Theobald, Director of Contributor Operations, Universal Service Administrative Company, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau, at 1 (May 4, 2023) (on file in EB-IHD-20-00031703) (USAC Letter).

[43] *See* Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to William Slappey, President, Slappey Communications, LLC, Chief Operating Officer, Slappey Telephone, Inc. (Dec. 17, 2020) (regarding compliance with 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 1.7001, 1.8002, 52.17, 52.32, 54.706, 54.711, 54.712, 64.604, 64.2009(e), 64.2115) (on file in EB-IHD-20-00031703) (LOI). In the LOI, the Bureau defined the investigation target or the "Company" to include "Slappey Telephone, Inc., Slappey Communications, LLC, BMP Slappey Holdco, LLC, and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, ..." *Id*. at 21.

[44] *See* Response to Letter of Inquiry, from Compliance Solutions, Inc., on behalf of Slappey Telephone, Inc., Slappey Communications, LLC, and BMP Slappey Holdco, LLC, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (on file in EB-IHD-20-00031703) (January 11, 2021 LOI Response); E-mail from Compliance Solutions, Inc., Consultant to RevTel Communications, LLC, to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, FCC (Feb. 5, 2021, 21:40 EDT) (on file in EB-IHD-20-00031703) (February 5, 2021 LOI Response); E-mail from Compliance Solutions, Inc., Consultant to RevTel Communications, LLC, to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, FCC (Feb. 6, 2021, 07:51 EDT) (on file in EB-IHD-20-00031703) (February 6, 2021 LOI Response); E-mail from Compliance Solutions, Inc., Consultant to RevTel Communications, LLC, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Mar. 8, 2021, 23:29 EDT) (on file in EB-IHD-20-00031703) (March 8, 2021 LOI Response).

[45] *See* January 11, 2021 LOI Response at 1-2, Responses to Questions 1 and 3.

[46] *See* USAC Letter at 1.

[47] *See* January 11, 2021 LOI Response at 1-2, Responses to Questions 1 and 3.

in 2012,[48] and the Company provides CLEC services in nine states.[49] The Company also provides interconnected VoIP service.[50] RevTel has rebranded itself as IT Voice.[51]

12. Between February 1, 2021, and May 22, 2022, USAC repeatedly requested supporting documentation from RevTel in order to verify the accuracy of the Company's 2020, 2021, and 2022 Annual Worksheets, and in particular the accuracy of reported non-telecommunications revenues, gross billed revenues, and any federal USF surcharge revenues.[52] The Company, however, repeatedly failed to respond, or submitted non-responsive and late replies, over the course of this nearly 16-month period.[53] The Company has still not provided USAC the documentation necessary to verify the accuracy of RevTel's Annual Worksheets for 2020 through 2022.[54]

13. RevTel failed to comply with six USAC directives to provide timely and complete documentation to support revenues reported in the Company's 2020, 2021, and 2022 Annual Worksheets. *First*, to verify the accuracy of the Company's 2020 Annual Worksheet filing, on February 1, 2021, USAC directed RevTel to provide documentation supporting revenues other than telecommunications revenues reported on Line 418.3.[55] RevTel's response was due February 8, 2021, but RevTel did not respond by the deadline.[56] *Second*, on February 19, 2021, USAC again directed RevTel to provide the documentation, with a response deadline of March 8, 2021.[57] RevTel did not respond by this deadline either.[58]

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[48] *See id.* at 4-6, Responses to Questions 6, 8, 11-12.

[49] *See id.* at 4-5, Responses to Questions 6 and 8; https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=829664 (last visited May 10, 2023).

[50] RevTel provides "IT support, sells hardware and software, sells PBX solutions, sells structured cabling, manages telecom bills, sells Hosted PBX and internet, sells interconnected VoIP services, and provides labor to configure and maintain various technology solutions." January 11, 2021 LOI Response, *supra* note 44, at 6, Response to Question 11.

[51] *See https://www.itvoice.com/revtel* (last visited May 10, 2023).

[52] *See* USAC Letter, *supra* note 42, at 1-3. If a service provider recovers its federal USF contributions by billing its customers, "the amount of the federal [USF] line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor." 47 CFR § 54.712.

[53] *See generally* USAC Letter, *supra* note 42.

[54] *Id.*

[55] RevTel filed its 2020 Annual Worksheet on March 24, 2020. On February 1, 2021, after USAC became aware of potential reporting inaccuracies, USAC requested (a) financial statements supporting the revenues in RevTel's 2020 Annual Worksheet; (b) an explanation of how the Company used the data in the financial statements to determine the revenues reported on each line of the Worksheet; and (c) identifications, descriptions, and revenues for services or products reported on Line 418.3, and explanations concerning why the revenues reported on Line 418.3 were not telecommunications revenues. *Id.* at 1.

[56] *Id.*

[57] *Id.* RevTel provided the Bureau documentation on February 5, 2021, that the Company indicated was responsive to USAC's February 1, 2021, documentation request. USAC informed RevTel that the documentation the Company provided the Bureau on February 5, 2021, was not responsive to USAC's February 1, 2021, documentation request. RevTel did not provide (a) an explanation of how the Company used data in financial statements to determine revenues reported on each line of the 2020 Annual Worksheet; and (b) identifications, descriptions, and revenues for services or products reported on Line 418.3, and explanations concerning why the revenues reported on Line 418.3 were not telecommunications revenues. *See id.*; *see also* February 5, 2021 LOI Response; February 6, 2021 LOI Response. USAC also informed the Company that the Bureau would be apprised of RevTel's failure to comply with USAC's February 1, 2021 documentation request. USAC Letter, *supra* note 42, at 2.

14. *Third*, on January 5, 2022, USAC directed RevTel to provide documentation that supported the accuracy of revenues other than telecommunications revenues reported on Line 418.3 of the Company's 2021 Annual Worksheet.[59] This documentation was due to USAC on January 12, 2022, but RevTel did not respond by the deadline.[60] *Fourth*, on February 21, 2022, USAC again directed RevTel to provide the supporting documentation for the 2021 Annual Worksheet, with a response deadline of February 28, 2022, and RevTel did not respond by this deadline either.[61]

15. *Fifth,* on March 28, 2022, USAC directed RevTel to provide documentation supporting revenues reported in the Company's 2022 Annual Worksheet, and in particular (a) revenues other than telecommunications revenues reported on Line 418.3, (b) gross billed revenues reported on Line 419, and (c) any federal USF surcharge revenues.[62] The Company's response was due on April 4, 2022, but again RevTel did not respond by the deadline.[63] *Sixth*, on April 22, 2022, USAC again directed RevTel to provide the documentation supporting the Company's 2022 Annual Worksheet.[64] The response deadline was May 22, 2022, and the Company did not respond by the deadline.[65]

16. More than two years and three months has elapsed since USAC's February 1, 2021 request for documentation. RevTel has still not complied with USAC's documentation requests concerning the Annual Worksheet filings for 2020 through 2022.[66] Additionally, on March 24, 2023, RevTel filed a revised 2022 Annual Worksheet, reducing its reported revenues from $878,810 to zero.[67]

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[58] USAC Letter, *supra* note 42, at 2. On January 5 and February 21, 2022, USAC informed RevTel the Company's documentation requirements for the 2020 Annual Worksheet were still pending. *Id.*

[59] *Id.* RevTel filed its 2021 Annual Worksheet on March 27, 2021. USAC requested (a) financial statements, and if audited financial statements were not available, the Company's federal tax return, to support revenues reported on each line of the 2021 Annual Worksheet; and (b) an explanation regarding how the Company used the data in the financial statements or tax return to determine the revenues reported on each line of the Worksheet. *Id.* When discussing the Company's ongoing failures to comply with documentation requirements on June 16, 2022, RevTel informed USAC that the Company provided telecommunications services in 2021. However, RevTel did not report any telecommunications services revenue in the Company's 2021 Annual Worksheet. *See id*.

[60] *Id.*

[61] *Id.* USAC informed RevTel that if the Company again failed to respond it would refer the document production failure to the Bureau. *Id.*

[62] *Id.* RevTel filed its 2022 Annual Worksheet on March 28, 2022, and on the same day, USAC directed RevTel to provide (a) documentation supporting the significant increase in gross billed revenues on Line 419 of the Worksheet; (b) financial statements, and if audited financial statements were not available, the Company's federal tax return, to support revenues reported on each line of the Worksheet; (c) an explanation regarding how the Company used the data in the financial statements and tax return to determine the revenues reported on each line of the Worksheet; (d) identifications, descriptions, and revenues for services or products reported on Line 418.3, and explanations regarding why the revenues reported on Line 418.3 were not telecommunications revenues; and (e) RevTel's January, April, July, and October 2021 invoices to the Company's top five customers of telecommunications, telecommunications service, or interconnected VoIP service, documentation showing how the billed revenues in each invoice were reported in the 2022 Annual Worksheet, and documentation showing how RevTel calculated any federal USF surcharges on each invoice. *Id.*

[63] USAC Letter, *supra* note 42, at 2-3.

[64] *Id.* USAC informed RevTel that if the Company failed to respond, the document production failure would be referred to the Bureau. *Id.*

[65] *Id*. On June 7 and July 5, 2022, USAC notified RevTel that the Company's documentation requirements were still pending. *Id.* USAC also communicated with RevTel concerning the pending documentation requirements in e-mail messages sent between June 13 and August 3, 2022. *Id.*

[66] *Id*. at 1.

As of May 10, 2023, the Company has also not filed its 2023 Annual Worksheet, which was due on April 1, 2023, and May 2023 Quarterly Worksheet, which was due on May 1, 2023.[68] The Commission reserves the right to take further enforcement action against RevTel for any violations of the Commission's documentation, filing, and payment requirements arising under the Act and pursuant to the Commission's rules or orders.

III. DISCUSSION

17. Based on the evidence developed through the Bureau's investigation, RevTel apparently violated section 54.711(a) of the Commission's rules by willfully and repeatedly failing to comply with USAC's directives to provide documentation supporting the accuracy of the Company's Annual Worksheets for 2020 through 2022.[69] Specifically, RevTel failed to submit supporting documentation to USAC by the deadlines established on February 8 and March 8, 2021, January 12, February 28, April 4, and May 22, 2022.[70]

18. Companies that file Worksheets are required to maintain documentation to justify the information reported in Worksheets and provide it to the Commission or USAC upon request.[71] The obligation is clearly stated in the Commission's rules and orders, is reiterated in the instructions to the Worksheets, and has been the subject of prior enforcement actions.[72] To verify the accuracy of the Company's Annual Worksheets for 2020 through 2022, USAC directed the Company to provide documentation that supported reported revenues other than telecommunications revenues, gross billed revenues, and any federal USF surcharge revenues.[73] USAC's documentation directives were not unusual and were consistent with the Commission's rules.[74]

19. USAC's ability to verify the accuracy of Worksheets on behalf of the Commission is fundamental to implementing the Congressional directive to ensure the equitable and non-discriminatory distribution of universal service costs among all service providers. A service provider must timely respond to each directive by USAC to provide documentation supporting information reported in a Worksheet. Service providers have an obligation to respond in a timely, full, and accurate manner in every instance, regardless of the number of times USAC must follow up to obtain or clarify a response. More importantly, the goal of section 54.711(a) of the Commission's rules—to allow USAC to verify each Worksheet to ensure compliance with payment requirements under FCC rules—is frustrated when the Commission and USAC have to make multiple requests, or wait multiple months or years, to obtain the documentation needed to verify the accuracy of a Worksheet. We consider each individual failure to

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[67] *See* https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=829664 (last visited May 10, 2023).

[68] *Id*.

[69] *See* 47 CFR § 54.711(a).

[70] USAC Letter, *supra* note 42, at 1-3.

[71] *See* 47 CFR §§ 54.706(e), 54.711(a).

[72] *See, e.g.*, 47 CFR § 54.711(a); *PayG, LLC*, Notice of Apparent Liability for Forfeiture, FCC 22-69, 2022 WL 4245060, *12, para. 38 (Sept. 14, 2022) (*PayG NAL*); *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-303, 2022 WL 1000385, *9, para. 27 (Apr. 1, 2022) (*Correct Solutions NAL*); *2022 Annual Worksheet Instructions*, *supra* note 9, 36 FCC Rcd at 14201-02; *US South Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 12668, 12676, para. 22 (EB 2020) (*US South NAL*) (forfeiture paid); *Compu-Phone Voice & Data, Inc.,* Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6573, 6583, para. 23 (EB 2020) (*Compu-Phone NAL*) (forfeiture paid); *Blue Casa Tel., LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6333, 6344, para. 25 (EB 2020) (*Blue Casa NAL*) (forfeiture paid).

[73] USAC Letter, *supra* note 42, at 1-3.

[74] *See* 47 CFR § 54.711(a); USAC Letter, *supra* note 42, at 1-3.

respond fully and accurately by a deadline a separate violation of section 54.711(a) of the Commission's rules.[75]

20. RevTel has still not provided USAC the documentation that USAC needs to verify the revenues RevTel reported in the Company's Annual Worksheets for 2020 through 2022. By precluding USAC from verifying the Company's revenues, RevTel has also prevented the FCC from determining whether RevTel has fully paid its obligations under the Commission's rules for USF, TRS, LNP, NANP, and federal regulatory fee cost recovery requirements.[76] The Commission reserves the right to take further enforcement action against RevTel for any violations of payment requirements arising under the Act and pursuant to the Commission's rules or orders.

21. We find that the Company apparently violated section 54.711(a) of the Commission's rules by willfully and repeatedly failing to respond timely to USAC's directives to provide documentation supporting the accuracy of the Company's Annual Worksheets for 2020 through 2022. Specifically, RevTel failed to submit timely responses to USAC in response to six directives with six separate due dates over nearly a 16-month period between February 8, 2021, and May 22, 2022.[77]

IV. PROPOSED FORFEITURE

22. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."[78] For the violations at issue here, section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture against a service provider such as RevTel of up to $237,268 for each violation or each day of a continuing violation, up to a statutory maximum of $2,372,677 for a single act or failure to act.[79] In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[80] In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria to consider when determining the appropriate penalty in any given case.[81] The forfeiture guidelines listed in section 1.80 of the Commission's rules specifically "are intended as a guide for frequently recurring violations" and not "a complete or exhaustive list of violations."[82]

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[75] *See, e.g.*, *PayG NAL* at *7, para. 22; *Correct Solutions NAL* at *5, para. 16; *US South NAL*, 35 FCC Rcd at 12674, para. 14.

[76] *See* 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A).

[77] *See* USAC Letter, *supra* note 42, at 1-3.

[78] 47 U.S.C. § 503(b)(1)(B).

[79] *See id.* § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act ($100,000 per violation or per day of a continuing violation and a statutory maximum of $1,000,000 for a single act or failure to act). *See Amendment of Section 1.80(b) of the Comm'n's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008 (EB Dec. 23, 2022); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

[80] 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

[81] *See* 47 CFR § 1.80(b)(10), Tbl. 1 to para. (b)(10); *Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (*1997 Forfeiture Guidelines*) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act"), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[82] *See 1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

23. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.[83] Under section 1.80 of the Commission's rules, we may adjust a forfeiture upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.[84] We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[85]

24. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if "the violation charged occurred more than one year prior to the date of issuance of the required notice or notice of apparent liability."[86] We therefore propose a forfeiture for RevTel's apparent failure to submit a timely and complete response to USAC's directive to provide supporting documentation by the May 22, 2022 deadline.

25. As the Commission observed in another USF enforcement action,[87] "the size and scope of the universal service and [other federal regulatory] programs impose a monumental burden on the Commission [and] USAC . . . to verify that each and every carrier has complied with the revenue reporting requirements. By necessity, the Commission and the other entities must rely on carriers' compliance with our rules."[88] To assist the Commission and USAC in this endeavor, the Commission's document retention and production rules were adopted to ensure the accuracy of each Worksheet and as a result ensure compliance with the USF, TRS, LNP, NANP and federal regulatory fee cost recovery requirements.[89] The Commission has imposed a $50,000 base forfeiture for a contributor's failure under section 54.711(a) of the Commission's rules to maintain documentation that supports information reported in Worksheets, and provide it to USAC or the FCC upon request.[90] We thus propose a $50,000 base forfeiture against RevTel for its failure to submit a timely and complete response to USAC's directives by the deadline of May 22, 2022.

26. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with service provider documentation requirements to be very serious.[91] USAC's verification of Worksheets is a vital component of ensuring the integrity of the USF as well as compliance with the Commission's TRS, LNP, NANP, and federal regulatory fee payment requirements. We have also considered the degree of the Company's culpability.[92] Service providers have an important obligation to comply with USAC verification functions, and the Company is thus highly culpable for the failures to respond to USAC documentation directives, which were repeated in this case over approximately 16 months. Section 1.80 of the Commission's rules provides for an upward adjustment to forfeiture amounts

[83] *See id.* at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

[84] 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10). *See also 1997 Forfeiture Guidelines*, 12 FCC Rcd at 17098–99, para. 22 (1997).

[85] 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10).

[86] 47 U.S.C. § 503(b)(6)(B).

[87] *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), *forfeiture issued*, Order of Forfeiture, 21 FCC Rcd 4710 (2006) (*Globcom Forfeiture Order*).

[88] *Globcom NAL*, 18 FCC Rcd at 19904, para. 30.

[89] *See Federal-State Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971, para. 34 (2002).

[90] *See, e.g.*, *PayG NAL*, *supra* note 72, at *12, para. 37*; US South NAL*, *supra* note 72, 35 FCC Rcd at 12676, para. 22; *Compu-Phone NAL*, *supra* note 72, 35 FCC Rcd at 6583, para. 23; *Blue Casa NAL*, *supra* note 72, 35 FCC Rcd at 6344, para. 25.

[91] *See* 47 U.S.C. § 503(b)(2)(E).

[92] *See id.*

for prior violations of any FCC requirements and for repeated or continuous violations.[93] The Commission has recently issued several enforcement actions specifically involving service providers' failures to comply with the Worksheet documentation requirements under section 54.711(a) of the Commission's rules.[94] RevTel repeatedly violated these documentation requirements and has prevented USAC from verifying the accuracy of the Company's Worksheets.[95] Even after the Bureau issued the LOI to RevTel concerning compliance with the documentation requirements, RevTel has still not complied. We apply an upward adjustment of $50,000, which is 100 percent of the proposed base forfeiture, because of the repeated nature of the Company's apparent violations, including the Company's failures to respond to USAC directives to provide supporting documentation by the February 8 and March 8, 2021, January 12, February 28, April 4, and May 22, 2022 deadlines.[96] We therefore propose a total forfeiture of $100,000 against the Company, which includes a $50,000 base forfeiture for failing to submit documentation in response to USAC's directive by May 22, 2022, and an upward adjustment of $50,000 for the Company's repeated and ongoing failures to comply with USAC's directives.

27. Consistent with the Act and the Commission's rules,[97] we have exercised our discretion and considered the specific circumstances related to the Company and the violations it apparently committed, and we therefore find RevTel apparently liable for a total proposed forfeiture of one hundred thousand dollars ($100,000) for willfully and repeatedly failing to comply with the Commission's Worksheet documentation requirements.[98]

V. CONCLUSION

28. We have determined that RevTel apparently violated section 54.711(a) of the Commission's rules by willfully and repeatedly failing to submit timely responses to USAC in response to six document production directives with six separate due dates between February 8, 2021, and May 22, 2022.[99] We therefore find that RevTel is apparently liable for a forfeiture of $100,000.

VI. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, RevTel Communications, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one

[93] 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

[94] *See, e.g.*, *PayG NAL*, *supra* note 72, FCC 22-69, 2022 WL 4245060; *Correct Solutions NAL*, *supra* note 72, DA 22-303, 2022 WL 1000385; *US South NAL*, *supra* note 72, 35 FCC Rcd 12668; *Compu-Phone NAL*, *supra* note 72, 35 FCC Rcd 6573; *Blue Casa NAL*, *supra* note 72, 35 FCC Rcd 6333.

[95] *See* USAC Letter, *supra* note 42, at 1.

[96] *See* 47 U.S.C. § 503(b)(2)(B); *PayG NAL*, *supra* note 72, *12, para. 38 (applying "upward adjustment of $50,000, 100 percent of the proposed base forfeiture, because of the repeated nature of the Company's apparent violations"); *Correct Solutions NAL*, *supra* note 72, *8, para. 26 ("enforcement items could include upward adjustments to 100 percent or more of the proposed base forfeiture") (citing *Peace Communications, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 11388, 11395, para. 17 (EB 2021) (providing notice that enforcement actions involving violations of section 54.711 of the Commission's rule could apply a higher upward adjustment to the base forfeiture amount)).

[97] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Note 2 to para. (b)(10).

[98] 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.

[99] 47 CFR § 54.711(a). This NAL applies exclusively to the Commission rule violations by RevTel described herein and does not address any other potential criminal, civil or administrative liabilities of RevTel and its successors, assigns, agents or consultants.

hundred thousand dollars ($100,000) for its willful violation of section 54.711(a) of the Commission's rules, 47 CFR § 54.711(a).

30. **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, RevTel Communications, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 33 below.

31. In order for RevTel Communications, LLC to pay the proposed forfeiture, RevTel Communications, LLC shall notify Pamela Gallant at Pamela.Gallant@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and David Janas at David.Janas@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, RevTel Communications, LLC shall send electronic notification of payment to Pamela Gallant at Pamela.Gallant@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and David Janas at David.Janas@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[100]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[101] or printed CORES form[102] 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).[103] 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.

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

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

[102] 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.

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

- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

32. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[104] 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.

33. 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.[105] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Pamela Gallant at Pamela.Gallant@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and David Janas at David.Janas@fcc.gov.

34. 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.[106] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[107]

35. **IT IS FURTHER ORDERED** that, pursuant to section 54.711(a) of the Commission's rules, 47 CFR § 54.711(a), within 30 days, RevTel Communications, LLC **SHALL RESPOND** fully to (a) USAC's February 1, 2021, request for documentation supporting the 2020 Annual Worksheet; (b) USAC's January 5, 2022, request for documentation supporting the 2021 Annual Worksheet; and (c) USAC's March 28, 2022, request for documentation supporting the 2022 Annual Worksheet. **IT IS**

[104] *See* 47 CFR § 1.1914.

[105] *Id.* §§ 1.16, 1.80(g)(3).

[106] 47 U.S.C. § 503(b)(2)(E).

[107] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

FURTHER ORDERED that, pursuant to section 54.711(a) of the Commission's rules, 47 CFR § 54.711(a), RevTel Communications, LLC **SHALL RESPOND** fully to any further request by USAC for documentation supporting the Company's Annual Worksheets for 2020 through 2023 by each response deadline provided by USAC. **IT IS FURTHER ORDERED** that, pursuant to section 54.711(a) of the Commission's rules, 47 CFR § 54.711(a), within 30 days, RevTel Communications, LLC **SHALL FILE** the Company's 2023 Annual Worksheet and May 2023 Quarterly Worksheet. The failure of RevTel Communications, LLC to comply with these directives shall constitute a violation of a Commission order, entitling the Commission to exercise any and all rights and remedies authorized by law for the enforcement of a Commission order, including a forfeiture of up to $237,268 for each violation.[108]

36. **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 William Slappey, Chief Executive Officer, RevTel Communications, LLC, 4260 Cahaba Heights Court, Ste. 100, Birmingham, AL 35243, and by e-mail to Will.Slappey@slappey.com.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[108] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2); *Amendment of Section 1.80(b) of the Comm'n's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008 (EB Dec. 23, 2022).

PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 23-424
Released: May 31, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON TERRESTAR CORPORATION FILINGS SEEKING TO OFFER ADDITIONAL SERVICES IN THE 1.4 GHZ BAND

WT Docket No. 16-290

Comments Due: June 30, 2023
Replies Due: July 17, 2023

1. By this Public Notice, pursuant to an *Order* granting limited, conditional waiver relief to TerreStar Corporation (TerreStar),[1] the Wireless Telecommunications Bureau (Bureau) seeks comment on a letter filed by TerreStar on February 14, 2023, as supplemented by subsequent filings (collectively, Letters).[2] In the Letters, TerreStar (1) certifies that it timely met its Final Deployment Obligation[3] for its 1.4 GHz Band Licenses (Licenses) in accordance with the *Order's* conditions,[4] and (2) provides a full technical demonstration of how additional use of the spectrum will not cause harmful interference to in-band or adjacent-band Wireless Medical Telemetry Service (WMTS).[5]

2. The Bureau's Mobility Division issued the *Order* on April 30, 2020, providing additional time for TerreStar to deploy WMTS operations using its Licenses, based on information regarding the interference potential to WMTS and the need for additional WMTS spectrum to benefit public health and safety.[6] Among the conditions imposed on TerreStar was the requirement that, by July 30, 2023,

[1] *TerreStar Corporation Request for Temporary Waiver of Substantial Service Requirements for 1.4 GHz Licenses,* WT Docket No. 16-290, Order on Reconsideration, 35 FCC Rcd 4354 (WTB MD 2020) (*Order*).

[2] Letter from Bryan N. Tramont, Counsel for TerreStar Corporation (Tramont), to Marlene H. Dortch, Secretary, FCC (FCC Secretary Dortch) (Feb. 14, 2023) (February Letter); Letter from Tramont to FCC Secretary Dortch (Apr. 20, 2023) (April Letter); Letter from Tramont to FCC Secretary Dortch (May 3, 2023) (May 3 Letter); and Letter from Tramont to FCC Secretary Dortch (May 8, 2023) (May 8 Letter). All four letters are on file as pleadings in the Commission's Universal Licensing System (ULS) under TerreStar's Licenses; *see, e.g.*, call sign WQGU885. *See also Order*, 35 FCC Rcd at 4370 and n.112; Letter from Tramont to FCC Secretary Dortch (Jan. 9, 2023) (on file as a pleading in ULS under the Licenses; *see, e.g.*, call sign WQGU885) (claiming that TerreStar timely satisfied all deployment requirements specified in the *Order's* conditions).

[3] *See Order*, 35 FCC Rcd at 4372-73, para. 35 (detailing TerreStar's Final Deployment Obligation).

[4] February Letter, Exh. 1 ("Certification of John Kneuer," Chief Executive Officer of TerreStar). The conditions are set forth in the *Order*, 35 FCC Rcd at 4368-73, paras. 33-35.

[5] February Letter at 2-3 and Exh. 2 ("Technical Statement of TerreStar"), as supplemented by the April, May 3, and May 8 Letters.

[6] *Order*, 35 FCC Rcd at 4354, para. 2. TerreStar's commercial 1.4 GHz Band spectrum is governed by part 27 of the Commission's rules. The 1.4 GHz Band spectrum is adjacent to spectrum that is used for WMTS under part 95 of the Commission's rules. WMTS systems are used to monitor patients' health at thousands of hospitals and other medical facilities throughout the country.

TerreStar satisfy its Final Deployment Obligation in terms of operational deployments of WMTS in at least 2,000 health care facilities nationwide, using a significant portion of applicable frequencies for WMTS.[7] The Final Deployment Obligation also required TerreStar to file, no later than August 14, 2023, a notification of construction (NT) for each of its Licenses in ULS, demonstrating compliance with those metrics.[8]

3. The *Order* provided that, once TerreStar had satisfactorily met its Final Deployment Obligation, TerreStar could pursue deployment of additional (i.e., non-WMTS) services using these Licenses.[9] The *Order* specified that, should TerreStar opt to pursue such additional deployment, it would need to file a letter certifying that it had met its Final Deployment Obligation "as well as a full technical demonstration of how such additional uses will not cause harmful interference to in-band or adjacent-band WMTS, or otherwise undermine or prevent the continued provision of WMTS (including in vehicles and locations outside of health care facilities) on its 1.4 GHz spectrum."[10] The *Order* provided that "TerreStar may commence deployment of [ ] additional services 90 days after release of [the] Public Notice absent an affirmative finding by the Bureau that such additional services will cause harmful interference to WMTS."[11]

4. Interested parties may file comments and replies in WT Docket No. 16-290 by the deadlines noted on the first page of this Notice. 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).

5. For further information, please contact Nina Shafran, Mobility Division, Wireless Telecommunications Bureau, by e-mail at Nina.Shafran@fcc.gov.

-FCC-

[7] *Id*. at 4372-73, para. 35. The *Order* did not require that TerreStar make *all* of its licensed 1.4 GHz Band spectrum available for WMTS. *Id.* at 4370, para. 35 n.114 (stating "there may be, for example, technical issues that prevent them from using certain frequencies in given markets"). Another condition in the *Order*, however, is that "TerreStar must provide spectrum capacity and frequency planning and coordination services, free of charge, outside of registered WMTS health care facilities in support of any national public health emergency declared by the U.S. Department of Health and Human Services, including (but not limited to) facilitation of WMTS services to makeshift emergency hospitals, nursing facilities converted to critical care facilities, home monitoring environments, and other places where quarantined critical care patients must reside outside of major medical facilities." *Id*. at 4373, para. 35 and n.118 (citing 42 U.S.C. § 247d).

[8] *Id*. at 4372-73, para. 35 and n.116 (citing 47 CFR § 1.946(d)). Specific metrics were imposed for each Major Economic Area (MEA) for TerreStar's MEA-based Licenses, as well as for each area equivalent to an MEA for Economic Area Grouping-based Licenses. *Id*. TerreStar timely filed NTs for its Licenses. *See*, *e.g*., TerreStar NT for WQGU885, ULS File No. 0010361738 (filed Jan. 25, 2023).

[9] *Order*, 35 FCC Rcd at 4370 n.112.

[10] *Id*.

[11] *Id*.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: https://www.fcc.gov
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DA 23-425
Released: May 19, 2023

WIRELINE COMPETITION BUREAU DIRECTS USAC TO FULLY FUND ELIGIBLE CATEGORY ONE AND CATEGORY TWO E-RATE REQUESTS

CC Docket No. 02-6

In this Public Notice, the Wireline Competition Bureau (Bureau) announces that there is sufficient funding available to fully meet the Universal Service Administrative Company's (USAC) estimated demand for category one and category two requests for E-Rate supported services for funding year 2023.[1]

On March 29, 2023, USAC submitted a demand estimate for the E-Rate program for funding year 2023.[2] USAC estimates the total demand for funding year 2023 will be $2.944 billion, which includes estimated demand for category one services of $1.658 billion and of $1.286 billion for category two services.[3]

The Bureau announced that the E-Rate program funding cap for funding year 2023 is $4.768 billion.[4] Additionally, as of March 31, 2023, USAC projects that $440.22 million in unused funds from prior funding years is available for use in E-Rate funding year 2023.[5]

The Chief of the Bureau is delegated authority to determine the proportion of unused funds needed to meet category one demand and to direct USAC to use any remaining funds to provide category two support.[6] In light of the current funding cap of $4.768 billion and using available carry forward funding of $440.22 million, there is sufficient funding to fully fund all category one and category two funding requests for funding year 2023. We therefore direct USAC to fully fund eligible category one and category two requests submitted for funding year 2023. We also direct USAC to use $250 million in

[1] The E-Rate program is more formally known as the schools and libraries universal service support mechanism. The 2023 funding year runs from July 1, 2022 to June 30, 2024. Category one services include telecommunications, telecommunications services and Internet access. Category two services include internal connections, basic maintenance of internal connections and managed internal broadband services.

[2] *See* Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, CC Docket No. 02-6 (Mar. 29, 2023).

[3] *Id*. The demand estimate for funding year 2023 was reflected as $2.718 billion in the Third Quarter USF Size Projections. *See* USAC, Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2023, at 55 (May 2, 2023), https://www.fcc.gov/ecfs/document/10502666024464/2 (USAC Third Quarter 2023 USF Size Projections).

[4] *See Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2023*, CC Docket No. 02-6, Public Notice, DA 23-178 (WCB Mar. 3, 2023); 47 CFR § 54.507(a)(3).

[5] As of March 31, 2023, USAC projects that $440.22 million will be available as carry forward funds for funding year 2023. *See* USAC Third Quarter 2023 USF Size Projections, at 55.

[6] 47 CFR § 54.507(a)(5).

E-Rate funds unused from prior years to offset the collection requirements needed to fully meet demand for such services.[7] We further direct USAC to reserve the remaining amount of carry forward funds for future use.[8]

For additional information, please contact James Bachtell, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

- FCC -

[7] 47 CFR § 54.709(b) (explaining that any excessive contributions should be carried over into the following quarter and taken into account when determining the contribution factor, but also allowing the Commission to instruct USAC to treat the excess contributions in another manner). This instruction "may be made in the form of a Commission order or a public notice released by the Wireline Competition Bureau." *Id*.

[8] *See id.*; *see also* 47 CFR § 54.507(a)(6) (providing that "all funds collected and that are unused from prior years shall be available for use in the next full funding year of [the E-Rate program] in accordance with the public interest and notwithstanding the annual cap"). This action is also consistent with the treatment of carry-forward funds for other universal service programs, like the Rural Health Care program. *See, e.g.*, 47 CFR § 54.619(a)(5) (providing that the Wireline Competition Bureau, in consultation with the Office of the Managing Director, may determine the proportion of unused funding in the RHC program that may be used to either satisfy demand, reduce collections for the RHC program, or hold in reserve to address contingencies for subsequent funding years).

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
West Virginia Broadcasting, Inc.,	)	Facility ID 71679
Licensee of WTNJ(FM),	)	FRN: 0002012417
Mount Vernon, West Virginia		

ORDER TO PAY OR TO SHOW CAUSE

Adopted: May 19, 2023 **Released: May 19, 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 West Virginia Broadcasting, Inc. (Licensee), for WTNJ(FM), Mount Vernon, West Virginia (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) 2013, the deadline for paying regulatory fees was September 20, 2013;[3] for FY 2014, it was September 23, 2014;[4] and for FY 2015, it was September 24, 2015.[5] 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 Act[6] and section 1.1164

[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 2013 Regulatory Fees,* Public Notice, DA 13-1796, 28 FCC Rcd 12635 (OMD Sep. 4, 2013).

[4] *Payment Methods and Procedures for Fiscal Year 2014 Regulatory Fees*, Public Notice, DA 14-1283, 29 FCC Rcd 10500 (OMD Sep. 5, 2014).

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

[6] 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.

of the Rules,[7] 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.[8]

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of $3,985.06 for FY 2013; $3,843.00 for FY 2014; and $3,842.35 for FY 2015. 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.[9] When Licensee did not pay the regulatory fee debts for FYs 2013, 2014, and 2015, the Commission transferred those debts to the United States Department of Treasury for collection.[10] 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.[11] 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,[12] 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.[13] Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.[14]

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

[7] 47 CFR § 1.1164.

[8] 31 U.S.C. § 3717; 47 U.S.C. § 159A(c)(2); 47 CFR § 1.1940.

[9] *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 2013, 2014, and 2015. *See* Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to West Virginia Broadcasting, Inc. (MB July 24, 2019); Letter from Nazifa Sawez, Assistant Chief, Audio Division, FCC Media Bureau, to R. Shane Southern (MB Oct. 3, 2019); Email from Alexander T. Sanjenis, Assistant Chief, Audio Division, FCC Media Bureau, to R. Shane Southern (Apr. 2, 2022, 2:50 PM EDT); Email from Robin Lott, Audio Division, FCC Media Bureau, to R. Shane Southern (Mar. 28, 2023, 12:33 PM EDT).

[10] *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.

[11] 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).

[12] 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

[13] 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

[14] 47 U.S.C. § 159A(c)(4)(C)(ii)(iii) ; 47 CFR § 1.1164(f)(3).

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,[15] West Virginia Broadcasting, 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 2013, 2014, and 2015, **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)

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

West Virginia Broadcasting, 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 West Virginia Broadcasting, 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, West Virginia Broadcasting, 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): 1349 (for FY 2013); 1449 (for FY 2014); and 1549 (for FY 2015).

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to section 1.16 Commission's rules.[16] 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.[17] A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will assist in processing the response.

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[15] 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.11, 0.61, 0.231, 0.283 and 1.1164(f).

[16] 47 CFR § 1.16.

[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

(continued…)

- 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 West Virginia Broadcasting, Inc., c/o Randall S. Southern, 306 South Kanawha Street, Beckley, WV 25801, and to its counsel, Anne Thomas Paxson, Esq., 4000 Albemarle Street, NW, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director

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	)	
	)	
Applications of Viasat, Inc.	)	IB Docket No. 22-153
	)	
and	)	
	)	
Connect Topco Limited	)	ICFS File No. SES-T/C-20220201-00145
	)	
For Consent To Transfer Control of Authorizations	)	

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: May 19, 2023 **Released: May 19, 2023**

By the Chiefs, Space Bureau and Office of International Affairs

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APPENDIX A: List of Applications

I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Declaratory Ruling*, we consider the applications filed pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act),[1] of Viasat, Inc. (Viasat) and Connect Topco Limited (Connect Topco) (together, the Applicants) for Commission consent to the transfer of control of authorizations held by Inmarsat Group Holdings Inc. (IGHI), Inmarsat Inc., Inmarsat Solutions (US) Inc. (Inmarsat Solutions), and ISAT US Inc. (ISAT) (Inmarsat Licensees, and together with Inmarsat Group Holdings Limited, Inmarsat) from their parent, Connect Topco, to Viasat.[2] Viasat (Petitioner) also filed a related petition pursuant to section 1.5000(a)(1) of the Commission's rules, requesting a declaratory ruling to permit foreign ownership in excess of the statutory benchmarks under section 310(b)(4) of the Act (Viasat Petition).[3]

2. Based on the record before us and our review of the likely competitive effects of the proposed transaction, we find that the transaction, on balance, will serve the public interest, convenience, and necessity. Accordingly, for the reasons discussed below, we grant the applications to the transaction, subject to conditions, and grant Viasat's petition for a declaratory ruling.

II. BACKGROUND

A. Description of the Applicants

3. Viasat, a publicly traded Delaware corporation, is a provider of communications services and technologies, including satellite communications technologies for both military and commercial uses.[4] Viasat operates Ka-band (20/30 GHz) satellites, user terminals, and ground infrastructure to provide broadband services to consumers, government users, and enterprises, including residential broadband service and in-flight broadband connectivity to passengers on aircraft.[5] Viasat's broadband satellite network provides service throughout the United States, including through the ViaSat-1 and ViaSat-2 satellites.[6] According to the Applicants, Viasat earned $2.79 billion in revenues during the

[1] 47 U.S.C. §§ 214, 310(d); *see also* 47 CFR §§ 25.119, 25.137(g), 63.24.

[2] Consolidated Application for Consent to Transfer Control of Connect Topco Limited and Its Subsidiaries That Hold Commission Authorizations, Narrative, ICFS File No. SES-T/C-20220201-00145 (filed Jan. 31, 2022) (Narrative). Appendix A attached to this item provides a list of the Applications. *See also Applications Filed for Transfer of Control of Inmarsat to Viasat, Inc.*, IB Docket No. 22-153, Public Notice, DA 22-517 (IB May 11, 2022) (*Applications Public Notice*). The Applicants filed a supplement to the public interest statement in the Narrative on April 25, 2022. Letter from Matthew Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC (Apr. 25, 2022) (Public Interest Supplement).

[3] 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1); Viasat Inc., Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act, of 1934, as Amended, ICFS File No. ISP-PDR-20220131-00001 (filed Jan. 31, 2022) (Viasat Petition). Viasat (Petitioner) filed two supplements to the Petition on April 25, 2022. Letter from Matthew Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC (Apr. 25, 2022) (Updated Ownership Diagrams Supplement) (adding additional pre- and post-transaction ownership information); Letter from Matthew Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC (Apr. 25, 2022) (Updated Specific Approval and Advance Approval Supplement) (providing clarifications regarding specific approval and advance approval of foreign entities in Sections J and K of the Petition). The Petitioner filed two letters to supplement the Viasat Petition on June 6, 2022 and March 24, 2023. Letter from Matthew Murchison, Counsel to Viasat, and Alfred Mamlet, Counsel to Connect Topco, to Marlene H. Dortch, Secretary, FCC (June 6, 2022) (informing the Commission of non-material changes to Connect Topco's ownership structure); Letter from Matthew Murchison, Counsel to Viasat, and Alfred Mamlet, Counsel to Connect Topco, to Marlene H. Dortch, Secretary, FCC (Mar. 24, 2023) (informing the Commission of non-material changes to Viasat's and Connect Topco's ownership).

[4] Narrative at 2; Viasat Petition at 2.

[5] Narrative at 2; Viasat, 2021 SEC Form 10-K at 4 (filed May 31, 2022) (Viasat 2021 SEC Form 10-K) ("[Viasat] own[s] four Ka-band satellites in service . . . In addition, [Viasat] ha[s] lifetime leases of Ka-band capacity on two satellites.").

[6] Narrative at 2-3.

fiscal year ending March 31, 2022,[7] approximately 25%, or $700 million of which comprised revenues from the U.S. Government.[8]

4. Connect Topco, a Guernsey limited company, is a corporate parent of Inmarsat Group Holdings Limited, a U.K. limited company that holds Commission grants of market access, earth station licenses, and international section 214 authorizations through four wholly owned Delaware corporations—IGHI, Inmarsat Inc., Inmarsat Solutions, and ISAT.[9] Inmarsat provides satellite services in the United States using spectrum in the L-band (1 GHz) and Ka-band to support connectivity to maritime vessels and safety of life services to maritime users, cockpit communications and safety of flight for commercial aircraft, and connectivity to business aircraft and government users.[10] Inmarsat owns and operates 14 geostationary satellites, which includes its four L-band ELERA satellites, five Ka-band Global Xpress satellites, and the more recent I-6 satellites featuring hybrid L-band, narrowband, and Ka-band capabilities.[11] Inmarsat earned $1.35 billion in revenues during 2021, approximately $350 million of which is comprised of revenues from the U.S. Government.[12]

B. Description of the Transaction

5. On November 8, 2021, Viasat entered into a Share Purchase Agreement with the Inmarsat Investors and certain Inmarsat senior management shareholders (collectively, Inmarsat Shareholders), under which Viasat agreed to acquire ownership of Connect Topco.[13] Pursuant to the proposed transaction, Inmarsat Shareholders would receive $850 million in cash, subject to adjustments, and newly issued shares of the common stock of Viasat valued at approximately $3.1 billion and representing, in the aggregate, approximately 37.5% of the outstanding common stock of Viasat.[14] Viasat would also assume approximately $3.4 billion of net debt as part of the proposed transaction.[15]

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[7] Viasat 2021 SEC Form 10-K at F-5.

[8] *Id*. at F-9.

[9] According to the Applicants, Connect Topco is directly owned by (i) Triton LuxTopHolding SARL, a Luxembourg limited liability company, which is owned by certain limited partnerships comprising the Apax IX investment fund controlled by Apax IX GP Co. Limited, a Guernsey limited company; (ii) WP Triton Co-Invest, L.P., a Cayman Islands exempted limited partnership, which is owned by certain investment funds controlled by Warburg Pincus LLC, a New York limited liability company; (iii) CPP Investment Board Private Holdings (4) Inc., a Canadian corporation, which is a wholly owned subsidiary of Canada Pension Plan Investment Board; and (iv) 2684343 Ontario Limited, an Ontario, Canada corporation which is a wholly owned subsidiary of Ontario Teachers' Pension Plan Board. Each of Triton LuxTopHolding SARL, WP Triton Co-Invest, L.P., CPP Investment Board Private Holdings (4) Inc., and 2684343 Ontario Limited (together, the Inmarsat Investors) directly holds 25% of Connect Topco's voting interests. Narrative at 3-4; Viasat Petition at 4. Connect Topco owns 99.19% of Connect Sub-Topco Limited with the remaining 0.81% owned by a small number of Inmarsat senior management. Narrative at 3. Connect Sub-Topco Limited has 100% indirect equity and voting interests in Inmarsat. *Id*. at Attach. B.

[10] Narrative at 2-3.

[11] Inmarsat, *Satellites*, https://www.inmarsat.com/en/about/technology/satellites html (last visited May 11, 2023); Inmarsat, *I-6 Satellites*, https://www.inmarsat.com/en/about/technology/satellites/i-6 html (last visited May 11, 2023).

[12] Inmarsat, Connect BidCo Limited Annual Report and Accounts 2021 at 28, https://www.inmarsat.com/content/dam/inmarsat/corporate/documents/corporate/sustainability/how-we-do-business/annualreport/ConnectBidco_FY21_AnnualReportandAccounts_Final.pdf.coredownload.pdf (*See* "U.S. Government revenue, increasing by $39.7 million (12.8% yearly increase)," which we convert to an annual revenue figure as follows: $39.7 million + ($39.7 million / 12.8%) = $350 million).

[13] Narrative at 4; Viasat Petition at 11.

[14] Narrative at 4.

[15] Narrative at 4.

6. The Applicants assert that grant of the applications would serve the public interest, convenience, and necessity and would not violate any statute or Commission rule or raise issues in the areas of national security, law enforcement, foreign policy, or trade policy.[16] The Applicants argue that the proposed transaction will not result in competitive harm in market segments related to consumer broadband Internet access, commercial aviation, business aviation, maritime, energy, government, satellite capacity supply, or in other segments.[17] The Applicants claim that the combined company will be able to more efficiently deliver more robust and innovative services,[18] resulting in enhanced bandwidth and reliability.[19]

C. Transaction Review Process

7. On January 31, 2022, Viasat and Inmarsat filed applications with the Commission, including five FCC Forms 312 related to various earth station authorizations and one application related to international Section 214 authorizations.[20] The Applicants also filed a petition pursuant to section 1.5000(a)(1) of the Commission's rules requesting a declaratory ruling to permit foreign ownership in IGHI, the controlling U. S. parent of licensees Inmarsat Solutions and ISAT, above the 25% benchmarks in section 310(b)(4) of the Act.[21] On April 25, 2022, the Applicants filed a supplement to the public interest statement in the Narrative[22] and Petitioner filed two supplements to the Viasat Petition.[23]

8. On May 11, 2022, the International Bureau (IB)[24] released a public notice to announce the opening of a new docket.[25] In response to this public notice, the Commission received one petition to deny, one comment, the Applicants' consolidated opposition and response, and a reply.[26] On November

[16] Narrative at 5, 9.

[17] Public Interest Supplement at 3-5.

[18] Narrative at 7-8.

[19] Public Interest Supplement at 6.

[20] Narrative at 1, Attach. A.

[21] *See* Viasat Petition.

[22] *See* Public Interest Supplement.

[23] Updated Ownership Diagrams Supplement; Updated Specific Approval and Advance Approval Supplement.

[24] On April 11, 2023, the Commission reorganized the International Bureau into the Space Bureau and the Office of International Affairs. *See* News Release, FCC, FCC Space Bureau & Office Of International Affairs to Launch Next Week; Public Kickoff Event to Take Place on April 11 at FCC Headquarters (Apr. 7, 2023), https://www fcc.gov/document/fcc-space-bureau-office-international-affairs-launches-april-11; *see also 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 23-12, Order, FCC 23-1 (Jan. 9, 2023).

[25] *Applications Public Notice*. Prior to the release of this public notice, the application and subsequent filings were submitted via the International Communications Filing System (ICFS) under the File No. SES-T/C-20220201-00145. After the docket was opened on May 11, 2022, all of these filings became available under IB Docket No. 22-153.

[26] Kuiper Systems LLC, Comments (rec. June 10, 2022) (Kuiper Comments); Space Exploration Holdings, LLC, Petition to Deny (rec. June 10, 2022) (SpaceX Petition); Viasat, Inc. And Connect Topco Limited, Consolidated Opposition to Petition to Deny of Space Exploration Holdings, LLC and Response to Comments of Kuiper Systems LLC (rec. June 27, 2022) (Opposition); Space Exploration Holdings, LLC, Reply (rec. July 7, 2022) (SpaceX Reply). On January 23, 2023, SpaceX submitted an *ex parte* that reiterates concerns in its petition and on February 7, 2023, Viasat responded. Letter from David Goldman, Sr. Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Jan. 23, 2023) (SpaceX Jan. 23, 2023 *Ex Parte* Letter); Letter from Matthew T. Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Feb. 7, 2023) (Viasat Feb. 7, 2023 *Ex Parte* Letter). On March 16, 2023, SpaceX followed up on its claims and on March 22, 2013, Viasat responded. Letter from David Goldman, Sr.
(continued….)

16, 2022, IB and the Office of Economics and Analytics (OEA) issued Information Requests to both Applicants,[27] to which the Applicants responded on December 5, 2022, December 23, 2022, and January 13, 2023,[28] and supplemented in March and April 2023.[29]

9. On June 6, 2022, the United States Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee),[30] requested that the Commission defer action on the Application until such time as Committee has completed its review of the applications and Viasat Petition for any national security and law enforcement concerns that may be raised by foreign participation in the U.S. telecommunications sector.[31] On November 8, 2022, the Committee notified the Commission that it would complete its initial review before the end of the 120-day initial review period.[32] On March 9, 2023, the National Telecommunications and Information Administration (NTIA) filed a Petition to Adopt Conditions to Authorizations and Licenses on behalf of the Committee (Committee Petition).[33] The Committee advises that it has no objection to the Commission approving the applications and Viasat Petition, provided that the Commission conditions its approval on the assurance of Connect Topco and Viasat, to abide by the commitments and undertakings set forth in the February 15, 2023 Letter of Agreement (LOA).[34] Finally,

Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Mar. 16, 2023) (SpaceX Mar. 16, 2023 *Ex Parte* Letter); Letter from Matthew T. Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Mar. 22, 2023) (Viasat Mar. 22, 2023 *Ex Parte* Letter).

[27] *Viasat., Inc. General Information Request*, IB Docket No. 22-153 (IB/OEA Nov. 16, 2022) (Viasat Nov. 16, 2022 RFI); *Connect Topco Limited. General Information Request*, IB Docket No. 22-153 (IB/OEA Nov. 16, 2022) (Inmarsat Nov. 16, 2022 RFI).

[28] Viasat/Inmarsat Dec. 5, 2022 RFI Response; Viasat Dec. 23, 2022 RFI Narrative Response; Inmarsat Dec. 23, 2022 RFI Narrative Response; Viasat Jan. 13, 2023 RFI Supplemental Response; Inmarsat Jan. 13, 2023 RFI Supplemental Response.

[29] Viasat Mar. 8, 2023 RFI Further Supplemental Response; Inmarsat Mar. 8, 2023 RFI Response; Viasat Mar. 20, 2023 RFI Second Further Supplemental Response; Inmarsat Mar. 21, 2023 RFI Response; Viasat Apr. 7, 2023 RFI Third Further Supplemental Response; Inmarsat Apr. 10, 2023 RFI Response.

[30] DOJ, The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector – Frequently Asked Questions, https://www.justice.gov/nsd/committee-assessment-foreign-participation-united-states-telecommunications-services-sector (last visited May 11, 2023).

[31] Letter from David P. Palmer, Attorney Advisor, and Devin A. DeBacker, Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, File Nos. IB Docket No. 22-153; SES-T/C-20220201-00145; SES-T/C-20220201-00146; SES-T/C-20220201-00147; SES-T/C-20220201-00148; SES-T/C-20220201-00149; ITC-T/C-20220201- 00026; ISP-PDR-20220131-00001 (filed June 6, 2022) (Committee Deferral Letter).

[32] Letter from David P. Palmer, Attorney Advisor, and Devin A. DeBacker, Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC File Nos. IB Docket No. 22-153; SES-T/C-20220201-00145; SES-T/C-20220201-00146; SES-T/C-20220201-00147; SES-T/C-20220201-00148; SES-T/C-20220201-00149; ITC-T/C-20220201- 00026; ISP-PDR-20220131-00001 (filed Nov. 8, 2022).

[33] National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorizations and Licenses, FCC Nos. IB Docket 22-153; SES-T/C-20220201-00145; SES-T/C-20220201-00146; SES-T/C-20220201-00147; SES-T/C-20220201-00148; SES-T/C-20220201-00149; ITC-T/C-20220201-00026; ISP-PDR-20220131-00001, at 1-2 (filed Mar. 9, 2023).

[34] Committee Petition at 1-2; Letter of Agreement from Robert Blair, Senior Vice President, General Counsel and Secretary, Viasat, and Alison Horrocks, Secretary, Connect Topco, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, FIRS, on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division, and Director, Global Investment

(continued….)

the proposed transaction is also subject to review by the DOJ's Antitrust Division pursuant to section 7 of the Clayton Act.[35]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. Pursuant to sections 214(a) and 310(d) of the Act and section 25.119(a) of the Commission's rules, we must determine whether the proposed transfer of control to Viasat of authorizations held by Inmarsat will serve the public interest, convenience, and necessity.[36] In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[37] If the proposed transaction does not violate a statute or rule, we then consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[38] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[39] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[40] If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the Application for hearing.[41]

11. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[42] which include, among other things, a deeply rooted preference for preserving

and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense (dated Feb. 15, 2023) (LOA). A copy of the LOA is attached to the Committee Petition.

[35] 15 U.S.C. § 18.

[36] 47 U.S.C. § 214(a), 310(d); 47 CFR § 25.119(a). *See, e.g.*, *Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. For Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*); *Applications of T-Mobile US, Inc., and Sprint Corporation, Consent to Transfer Control of Licenses and Authorizations, Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisitions L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10595, para. 39 (2019) (*T-Mobile-Sprint Order*); *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 29 FCC Rcd 9131, 9139, para. 18 & n.35 (2015) (*AT&T-DIRECTV Order*).

[37] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 18.

[38] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 18.

[39] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 18.

[40] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 41; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18.

[41] *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 41; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18.

[42] *Western Union Division, Commercial Telegrapher's Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff'd*, 338 U.S. 864 (1949); *see AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19; *see also T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953).

and enhancing competition in relevant markets,[43] accelerating private sector deployment of advanced services,[44] promoting a diversity of information sources and services to the public,[45] and generally managing the spectrum in the public interest.[46] Our public interest analysis also entails assessing whether the proposed transaction would affect the quality of communications services or result in the provision of new or additional services to consumers.[47] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[48]

12. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[49] The Commission's competitive analysis under the public interest standard is broader than the DOJ's consideration, and may, for example, consider whether a transaction would enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.[50] Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions to ensure that the public interest is served by the transaction.[51] Specifically, section 303(r) of the Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.[52] Similarly, section

[43] 47 U.S.C. §§ 521(6), 532(a); *see, e.g., Applications for Consent to the Transfer of Control of Licenses and Authorizations by Time Warner, Inc. and America Online, Inc. to AOL Time Warner Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6555-56, para. 22 (2001).

[44] 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Preamble, Pub. L. No. 104-104, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services").

[45] 47 U.S.C. §§ 521(4), 532(a); *see Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 663 (1994) ("[I]t has long been a tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.") (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 & n.27 (1972)) (internal quotation marks omitted).

[46] 47 U.S.C. §§ 301, 303, 307.

[47] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[48] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[49] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 23; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 20; *Satellite Bus. Sys.*, 62 FCC 2d 997, 1068-73, 1088 (1977), *aff'd sub nom United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *see also Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

[50] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 23; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 21; *EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20575-76, para. 27 (2002) (*EchoStar-DIRECTV HDO*).

[51] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17003, para. 24; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *see also Application of WorldCom, Inc. and MCI Commc'ns Corp. for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, para. 10 (1998) (*WorldCom-MCI Order*) (stating that the Commission may attach conditions to the transfers).

[52] 47 U.S.C. § 303(r); *see AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *see also United States v. Sw. Cable Co.*, 392 U.S. 157, 178 (1968) (holding that section 303(r) permits the Commission to order a cable company (continued….)

214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."[53]

IV. QUALIFICATIONS OF THE APPLICANTS AND COMPLIANCE WITH COMMUNICATIONS ACT AND FCC RULES AND POLICIES

A. Qualifications of the Applicants

13. Among the factors that the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."[54] Therefore, as a threshold matter, the Commission must determine whether the Applicants have the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.[55] In making this determination, the Commission, as a general rule, does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.[56] Foreign ownership issues are analyzed separately and are discussed in section VIII.

14. Space Exploration Holdings, LLC (SpaceX) filed a petition to deny disputing Viasat's qualifications to hold licenses. SpaceX claims that Viasat operates in the 18.8-19.3 GHz and 28.6-29.1 GHz bands in violation of the terms of its blanket earth station licenses.[57] In response, the Applicants argue that the SpaceX assertions are not transaction-specific and concern licenses that are not the subject of the instant applications.[58]

15. We note that SpaceX cites to long standing claims regarding RF interference by satellites operating under licenses already held by Viasat.[59] The Commission, however, previously has found Viasat to be a qualified licensee on a number of occasions.[60] Consistent with precedent, we reject SpaceX's approach of using claims attached to licenses already held by an applicant as a basis for questioning the qualifications of that applicant.[61] As we have explained in previous proceedings, the

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not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (affirming syndicated exclusivity rules adopted pursuant to section 303(r) authority).

[53] 47 U.S.C. § 214(c); *see, e.g.*, *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674, para. 22 (2007); *WorldCom-MCI Order*, 13 FCC Rcd at 18031-32, para. 10.

[54] *See* 47 U.S.C. §§ 308, 310(d); *T-Mobile-Sprint Order,* 34 FCC Rcd at 10596, para. 43; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24.

[55] *See* 47 U.S.C. § 310(d); 47 C.F.R. § 25.119; *T-Mobile-Sprint Order,* 34 FCC Rcd at 10597-98, paras. 43; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24.

[56] *See, e.g., T-Mobile-Sprint Order,* 34 FCC Rcd at 10597-98, para. 45; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 25.

[57] *See* SpaceX Petition at 2, 4; *see also* SpaceX Reply; SpaceX Jan. 23, 2023 *Ex Parte* Letter; SpaceX Mar. 16, 2023 *Ex Parte* Letter.

[58] Opposition at 2-4; *see also* Viasat Feb. 7, 2023 *Ex Parte* Letter; Viasat Mar. 22, 2023 *Ex Parte* Letter.

[59] SpaceX Petition at 5.

[60] *See, e.g.*, ICFS File Nos. SES-MFS-20200204-00112 (granted Nov. 13, 2020); SES-LIC-20190919-01168 (granted Dec. 17, 2020); SES-RWL-20211012-01712 and SES-MOD-20211029-01760 (granted Nov. 1, 2021); SES-STA-20210827-01596 (granted Dec. 13, 2021); SES-RWL-20211019-01729 (granted Jan. 18, 2022).

[61] *See* Opposition at 4 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9233, para. 264 (declining to consider "a pre-existing dispute," involving "allegations that DIRECTV [was] intentionally causing harmful interference to Cox's broadband service"); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10728-29 para. 340 (declining to consider T-Mobile's alleged "history of violating rural call completion rules" as "not transaction-specific"); *Applications of Level 3*

(continued….)

Commission does not favor attempts to block applications for transfers of control as a means of dealing with preexisting disputes between parties regarding licenses previously held by an acquiring applicant and not the licenses that are the subject of the pending application for transfer of control.[62] We therefore dismiss SpaceX's petition to deny.

B. Compliance with Communications Act and Commission Rules and Policies

16. In order to find that granting an application would serve the public interest, we must find that it will comply with the Act, other applicable statutes, and the Commission's rules.[63] Kuiper raises a concern that, post-merger, Viasat and Inmarsat would be in violation of the Commission rule that limits the number of applications and approvals for "unbuilt systems" a company and its affiliates may hold.[64] Kuiper notes that Inmarsat has a pending application for a V-band NGSO system, and Viasat has an authorized-but-unlaunched Ka-band and V-band NGSO system as well as a pending application to modify the authorization for that system.[65]

17. The Applicants have acknowledged this issue in their Application and have committed to "take appropriate action and seek relief as needed, consistent with the Commission's rules and orders, to ensure 'compliance with the limits within a reasonable amount of time'" after grant of the transfer of control applications, to the extent the NGSO applications remain pending at the time of the grant.[66] We agree with the parties that the unbuilt systems rule does not prevent the filing of an application for transfer of control or assignment of licenses, even if the combined entities would not meet the limits on pending applications and unbuilt stations specified in the rule upon consummation of the transaction. Moreover, the rule does not require applicants in license transfer proceedings to take any actions *prior* to Commission approval of the transfers of control.[67] However, to ensure compliance with the Commission's rules, we condition our approval on Viasat and Inmarsat taking any actions necessary concurrent with consummation of the transaction to come into compliance with or obtain relief from the provisions of section 25.159(b) of the rules.

V. POTENTIAL PUBLIC INTEREST HARMS

18. For the reasons discussed below, we find that the likelihood of the proposed transaction leading to any public interest harms is low.

Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations, WC Docket No. 16-403, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9601, para. 42 (2017) (*CenturyLink-Level 3 Order*) (declining to consider allegations about "unreasonable bill payment practices" by the applicant)).

[62] *See, e.g., T-Mobile-Sprint Order,* 34 FCC Rcd at 10600, para. 50 ("The Commission does not favor attempts to use proceedings such as this one to raise issues better dealt with in alternative proceedings affording procedures more well-suited to addressing the parties' claims"); *Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations et al*., IB Docket No. 12-343 et al., Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9676, para. 85 (2013) ("intercarrier compensation disputes are not merger specific, are based on arguments about prior conduct by [the subject carrier], and are more appropriately resolved through the contractual provisions between the parties or through the Commission's complaint process under section 208 of the Act.").

[63] *See, e.g., T-Mobile-Sprint Order,* 34 FCC Rcd at 10598, para. 47; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9587, para. 14; *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., To Sirius Satellite Radio Inc.,* MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12364, para. 30 (2008).

[64] 47 CFR § 25.159(b).

[65] Kuiper Comments at 4-5.

[66] Opposition at 7 (quoting Narrative at 10).

[67] *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, Second Order on Reconsideration, 31 FCC Rcd 9398, 9406, para. 22 (2016).

A. Competitive Effects of the Proposed Transaction

19. In this section, we consider the potential competitive harms of the proposed horizontal transaction. Horizontal transactions, such as this one, raise potential competitive concerns when the combined entity post-merger has the incentive and the ability, either unilaterally or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.[68] We focus, in particular, on market segments in which both applicants compete. Specifically, Viasat and/or Inmarsat claim to primarily serve the following product market segments: consumer broadband Internet access; commercial aviation; business aviation; maritime; energy; and government.[69]

20. Below, we present separate analyses of potential harms in the government services, aviation services, and maritime services segments. We do not consider potential harms in the consumer broadband Internet access services because Inmarsat does not compete in this segment and there is no evidence in the record that it has any plans to do so.[70]

1. Government Services

21. Many U.S. government agencies contract with satellite service providers for a variety of services. These services can be segmented into "Bulk Leasing," "Land Mobile," "Aeronautical," "Maritime," and "Handheld and Other."[71] U.S. government agencies employ satellite services both domestically and internationally and use them to communicate on land, on the sea, in the air, or in space. In the United States, federal agencies procure necessary goods and services via a complex regulatory structure that frequently involves the submission of formal or informal bids,[72] depending on the solicitation method chosen.

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[68] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17006, para. 34; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10611, para. 79; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20608, para. 97. Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing its price or otherwise harming competition. U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines (Aug. 19, 2020), § 6 at 20 (*2010 DOJ/FTC Horizontal Merger Guidelines*), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

[69] Public Interest Supplement at 3-5.

[70] Narrative at 7; Public Interest Supplement at 3. Inmarsat routinely discusses the maritime, government, and aviation segments in its monthly reports, but does not discuss consumer broadband. *See, e.g.*, ISAT-FCC-00110697 (Inmarsat Monthly Management Report, June 2022); ISAT-FCC-00110696 (Inmarsat Monthly Management Report, May 2022).

[71] Bulk Leasing refers to leasing of raw spectrum capacity to the government. Land Mobile refers to services to land vehicles or portable devices. Maritime refers to services to vessels at sea. Aeronautical refers to services to aircraft. Handheld and Other refers to satellite phones, personal tracking devices, push-to-talk satellite radios, Wi-Fi hotspots, and other miscellaneous services. Northern Sky Research, Government and Military Satellite Communications, 19th ed. (Nov. 2022), https://www nsr.com/?research=government-and-military-satellite-communications-19th-edition; *see also* Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Viasat/Inmarsat, *No Competition Concerns in U.S. Government Mobile Satellite Communications Service: Submission to the U.S. Department of Justice Antitrust Division* at 5-7 (June 2, 2022) (Viasat/Inmarsat June 2, 2022 White Paper).

[72] *See generally* Congressional Research Service, Overview of the Federal Procurement Process and Resources, Updated April 14, 2023, https://crsreports.congress.gov/product/pdf/RS/RS22536. The Federal Acquisitions Regulations (FAR) System establishes acquisition policies and procedures for all executive agencies. 48 C.F.R. § 1.000. For some agencies, the FAR System is supplemented by agency-specific supplements. *See* Acquisitions.gov, *Federal Agencies and their Procurement Regulation Websites*, https://www.acquisition.gov/content/supplemental-regulations (last visited May 11, 2023). For an overview of the leading procurement methods in federal procurement and their prevalence, *see* Christopher R. Yukins, *The U.S. Federal Procurement System: An Introduction*, Procurement L. J., 79 (2017). For example, in sealed-bid procurement, vendors are limited to submitting formal bids which are compared on price and price-related factors. FAR 14.101(e). By contrast, in multilateral competitive negotiations, source selection can depend on the nature of the procurement. FAR 14.101(e).

22. Inmarsat asserts that three major categories of satellite service firms compete in U.S. government contracting: Satellite Network Operators (SNOs), satellite services providers (SSPs), and value-added resellers (VARs).[73] The Applicants claim that many firms compete for U.S. government satellite service contracts, including Intelsat, SES, Eutelsat, Telesat, Iridium, OneWeb, SpaceX, L3Harris, Boeing, Lockheed Martin, General Dynamics, and Northrop Grumman.[74] Separately, Inmarsat identifies defense contractors and various other firms as competitors,[75] while Viasat identifies SpaceX and Amazon Kuiper as notable entrants.[76]

23. The Applicants further argue that their market shares in the government services segment are modest[77] and that Viasat and Inmarsat do not typically compete directly with each other for U.S. government contracts.[78] The Applicants assert that Inmarsat supplies satellite communications services to U.S. government customers using L-band capabilities but there is no overlap because Viasat lacks L-band capabilities.[79] Further, the Applicants argue that while Viasat manufactures and sells equipment to U.S. government customers, Inmarsat does not.[80] The Applicants also assert that Viasat services are focused almost entirely on aeronautical applications while Inmarsat is active in all major segments.[81] Internal analysis by the Applicants indicates {[ ]} in contracts bid on from the start of 2019 through 2021.[82] The Applicants further argue that the U.S. government consists of sophisticated buyers with a variety of instruments and strong buyer power to induce more competition,[83] and that approval of this transaction will not meaningfully reduce the number of suppliers of satellite communications services available to the U.S. government.[84]

24. As noted above, Viasat reports $700 million of U.S. government revenue for the fiscal year ending March 31, 2022, comprising 25% of its total revenue.[85] However, Viasat claims that for fiscal year 2021, it derived only {[ ]} million from the sale of satellite-related services, of which {[ ]} million comprised mobile satellite communications services, with the rest consisting of "value-

[73] Inmarsat Dec. 23, 2022 RFI Narrative Response at 58. SNOs operate their own satellites, SSPs provide satellite service but may lease some of the capacity they use for their service packages, and VARs are resellers. *Id*.

[74] Public Interest Supplement at 4; *see also* Viasat/Inmarsat June 2, 2022 White Paper at 17-42.

[75] Inmarsat identifies defense contractors Airbus, Boeing, L3harris, Leonardo DRS, Lepton, Lockheed Martin, Northrop Grumman, and Raytheon. Inmarsat Dec. 23, 2022 RFI Narrative Response at 58-59, 62-63, 68-70, 72-73. Inmarsat also identifies Artel, Avanti, Cogitan, Comtech Telecommunications, Hughes, KVH, Ovzon, Peraton, Ultisat, and Xtar. Inmarsat Dec. 23, 2022 RFI Narrative Response at 60-65, 70-75.

[76] Viasat Dec. 23, 2022 RFI Narrative Response at 31.

[77] Viasat Dec. 23, 2022 RFI Narrative Response at 30; Viasat/Inmarsat June 2, 2022 White Paper at 47-48.

[78] Public Interest Supplement at 4; Viasat/Inmarsat June 2, 2022 White Paper at 43.

[79] Public Interest Supplement at 4-5. The Applicants also assert that Inmarsat supplies satellite services for U.S. government maritime programs requiring broad coverage outside of North America, but Viasat does not provide such services. *Id*.

[80] Public Interest Supplement at 4-5.

[81] Viasat/Inmarsat June 2, 2022 White Paper at 43-44. Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this item.

[82] Viasat/Inmarsat June 2, 2022 White Paper at 46-47.

[83] Viasat/Inmarsat June 2, 2022 White Paper at 48-52.

[84] Public Interest Supplement at 4-5.

[85] Viasat 2021 SEC Form 10-K at F-9.

added offerings" such as technical and operations centers.[86] As noted above, Inmarsat earned $350 million out of its $1.35 billion in 2021 revenue from U.S government services,[87] including {[ ]} million in Bulk Leasing, {[ ]} million in Land Mobile, {[ ]} million in Maritime, {[ ]} million in Aeronautical, and {[ ]} million in Handheld and Other.[88] The Applicants state that {[ ]} million of Inmarsat Aeronautical revenue is for narrowband services, and argue that Viasat is {[ ]} in narrowband service.[89]

25. *Competitive Effects.* The Applicants submitted estimates of market shares that indicate that Viasat and Inmarsat each have {[ ]}% of the overall market for U.S. government satellite services.[90] To independently determine market shares, we examined the public USASpending.gov database,[91] which contains monthly spending information from over 100 federal agencies,"[92] Based on 5,942 awards for contracts for satellite services during the five years spanning January 1, 2017 to December 31, 2022, we estimate that Viasat and Inmarsat have moderate market shares.[93] Based on

[86] Viasat Dec. 23, 2022 RFI Narrative Response at 29-30. Further, Viasat reports that {[ ]} million of the {[ ]} million came from aeronautical services, {[ ]} million came from land mobile services, and {[ ]} came from maritime services. Viasat claims {[ ]} from bulk leasing or handheld categories. *Id.* at 30; Viasat/Inmarsat June 2, 2022 White Paper at 8-11.

[87] Inmarsat, Connect BidCo Limited Annual Report and Accounts 2021 at 28, https://www.inmarsat.com/content/dam/inmarsat/corporate/documents/corporate/sustainability/how-we-do-business/annualreport/ConnectBidco_FY21_AnnualReportandAccounts_Final.pdf.coredownload.pdf.

[88] Viasat/Inmarsat June 2, 2022 White Paper at 8-9.

[89] Viasat/Inmarsat June 2, 2022 White Paper at 8.

[90] Viasat/Inmarsat June 2, 2022 White Paper at 47-48.

[91] USASpending.gov, *Advanced Search*, https://www.usaspending.gov/search (last visited May 11, 2023).

[92] USASpending.gov, *Resources: Data Sources*, https://www.usaspending.gov/data-sources (last visited May 11, 2023). Not every executive branch agency and no agency in the judicial or legislative branch is required to report on USASpending.gov. Moreover, USASpending.gov does not include "information that could compromise national security." *Id.*

[93] Specifically, we filtered for contracts in the "Satellite Telecommunications" industry and those in the most relevant service categories: North American Industry Classification System (NAICS) code 517410 (Satellite Telecommunications), and Product and Service Codes (PSCs) DD01, D304, D306, D308, D314, DA01, D302, D307, D308, D313, D318, D399, H170, H970, J070, R413, DG01, D316, DG10, D322, and DG11. The NAICS is the U.S. Census classification system for industries included in the USASpending.gov. U.S. Census, *North American Industry Classification System*, https://www.census.gov/naics/ (last visited May 11, 2023). PSCS are the U.S. government's product and service classification system included with the USASpending.gov data. Acquisition.gov, *Product and Service Code Manual* (Feb. 9, 2022), https://www.acquisition.gov/psc-manual. PSC selection was informed by contracting competitions reported by the Applicants as ones they had participated in and for which they had identification numbers, allowing linkage to the USASpending.gov data. Viasat Jan. 13, 2023 RFI Supplemental Response, Attach., ISAT-FCC-00110922; Viasat Mar. 8, 2023 RFI Further Supplemental Response, Attach., Confidential – Request 11.d RFP Data (03.08.23 Update); Inmarsat Mar. 8, 2023 RFI Response, Attach., Inmarsat Contracts Clarification – Spec 11. PSCs have been revised in recent years, so we include both the pre-revision and post-revision versions of the PSCs. For a crosswalk between pre- and post-revision PSCs, *see* NASA, *Information Specific to United States Department of Veterans Affairs (VA)* (Nov. 1, 2020), https://www.sewp nasa.gov/agencies/VA/index.shtml. Further, while USASpending.gov also contains data on sub-contracting, to avoid issues that include duplicate reporting and inconsistent reporting in these data, we looked at the prime contractor. USASpending.gov, *Sitewide Award Data Disclosures: Subaward Data Quality*, https://www.usaspending.gov/?about-the-data=subaward-data-quality (last visited May 11, 2023).

Current Total Value (all money paid in the contract to the current date),[94] Viasat has a market share of approximately 10% and Inmarsat has a market share of approximately 16%.

26. We note certain limitations, however, with these market share estimates. In particular, these shares assume that for every contract opportunity included, all the market participants were potential suppliers, which may be inaccurate. Many satellite service projects have unique technological and operational requirements, which could change the set of feasible vendors. The Applicants identify different sets of competitors in different segments and they argue that Viasat and Inmarsat have different business focuses: Viasat has a majority of sales in {[ ]}; Viasat services are focused on aeronautical applications as opposed to Inmarsat's more diverse offerings portfolio; and Inmarsat has {[ ]} narrowband services while Viasat {[ ]}.[95]

27. *Head-to-Head Competition.* While Inmarsat documents characterize Viasat {[ ]} in government services,[96] the Applicants report that after analyzing their contracting databases, they found {[ ]} of head-to-head competition in U.S. government satellite services after analyzing their contracting databases.[97] Inmarsat documents tracking government sector contracting opportunities from March 2021 to March 2022 list Viasat as a {[ ]} out of {[ ]} sole-awardee opportunities mentioned.[98] Viasat documents mention Inmarsat as a competitor mostly for {[ ]}.[99]

[94] The USASpending.gov data also contains "Total Obligated Value" and "Total Potential Value" as measures of contract value. Total Obligated Value is all money currently allocated by government accounting to the contract. Total Potential Value is all money that could be paid in the contract if all options are exercised and the contract reached its maximum contract length. Either alternative measure yields qualitatively similar results to Current Total Value. USASpending.gov, *Resources: Data Dictionary*, https://www.usaspending.gov/data-dictionary (last visited May 11, 2023).

[95] Viasat/Inmarsat June 2, 2022 White Paper at 43-44; Viasat Apr. 7, 2023 RFI Third Further Supplemental Response, Attach., Viasat/Inmarsat, *Rapid and Ongoing Market Developments in Mobile Satcom Services Over the Course of the Division's Investigation Confirm That the Viasat-Inmarsat Transaction Will Not Substantially Lessen Competition* at 15, 19-20 (Mar. 24, 2023) (Viasat/Inmarsat Mar. 24, 2023 White Paper).

[96] ISAT-FCC-00100000 at ISAT-FCC-00100032 (Inmarsat Government Proxy Board Meeting, Mar. 5, 2020); ISAT-FCC-00100045 at ISAT-FCC-00100051 (2020-24 Long Range Business Plan: 2020 Annual Business Plan and Budget, Book Four – US Government LRBP and Budget, Feb. 2020).

[97] Viasat/Inmarsat June 2, 2022 White Paper at 46-47.

[98] ISAT-FCC-00102571 (Capture Management Opportunity Status, Aug. 20, 2021); ISAT-FCC-00102588 (Capture Management Opportunity Status & Strategy, Sept. 2021); ISAT-FCC-00103066 (Capture Management Opportunity Status, Mar. 15, 2021); ISAT-FCC-00102670 (Capture Management Opportunity Status & Strategy, Nov. 2021); ISAT-FCC-00103074 (Capture Management Opportunity Status, Apr. 28, 2021); ISAT-FCC-00103089 (Capture Management Opportunity Status, July 16, 2021), ISAT-FCC-00103106 (Capture Management Opportunity Status, Aug. 20, 2021), ISAT-FCC-00103124 (Capture Management Opportunity Status & Strategy, Oct. 15. 2021), ISAT-FCC-00103151 (Capture Management Opportunity Status & Strategy, Dec. 1, 2021), ISAT-FCC-00103182 (Capture Management Opportunity Status & Strategy, Jan. 2022), ISAT-FCC-00103213 (Capture Management Opportunity Status & Strategy, Feb. 11, 2022), ISAT-FCC-00103243 (Capture Management Opportunity Status & Strategy, Mar. 2022). Going forward, we refer to these documents jointly as the "ISAT-FCC Status & Strategy Documents." Viasat is the sole competitor to Inmarsat in {[ ]} of those opportunities. ISAT-FCC-00103243 at ISAT-FCC-00103252 (Capture Management Opportunity Status & Strategy, Mar. 2022).

[99] VIA-2R-001204244 at VIA-2R-001204264, VIA-2R-001204270, VIA-2R-001204315-16, and VIA-2R-00120436 (Viasat Government Systems: Differentiated Business Strategy Creating Market Leading Business Performance, July 2020) ({[ ]}); VIA-2R-001766225 at VIA-2R-001766342-43 and VIA-2R-001766349 (Government Systems Strategy, Nov. 12, 2021) ({[ ]}); VIASAT-VAL-001372 at VIASAT-VAL-001396-97 (Viasat Government Systems: Differentiated Business Strategy Creating Market-Leading Business Performance, Jan. 2021) ({[ ]}). (continued….)

28. In addition, contracting requirements in the government sector are often sufficiently specialized as to permit only one viable entity, and in such instances, a merger would not reduce competition. Viasat, for example, was the only bidder in every contract it won in the USASpending.gov sample used to construct market shares. Inmarsat is the only bidder in 41% of its awarded contracts in that sample based on Current Total Value.[100] Seventy-five percent of Current Total Value have only one bidder in the USASpending.gov sample.[101] In the Inmarsat documents tracking government sector opportunities, {[ ]} sole-awardee projects list no other competitor.[102]

29. *Number of Competitors.* When contracting opportunities are open to multiple competitors, we find that existing competition reduces the risk of post-transaction harm. There are currently numerous competitors in the U.S. government sector. From January 1, 2017 to December 31, 2022, the market share sample of USASpending.gov data has over 200 different contractors that have won contracts in the Satellite Telecommunications industry sector.[103] Inmarsat lists 17 firms as competitors in its narrative response.[104] In Inmarsat documents tracking government opportunities, the {[ ]} competitive projects with more than one suspected bidder have on average {[ ]} competitors.[105] Focusing on contracts with full and open competition in the USASpending.gov sample, the number of competitors ranges from 1 to 24.[106] Even when taking into account the large proportion of these contracts with only one competitor in the USASpending.gov sample, the mean number of competitors for these

VIASAT-DOJ-010501 at VIASAT-DOJ-010511-13 ({[ ]}).

[100] USASpending.gov, *Advanced Search*, https://www.usaspending.gov/search (last visited May 11, 2023).

[101] USASpending.gov data contains the "Number of Offers Received" variable, which corresponds to submitted formal bids to the contract. USASpending.gov, *Resources: Data Dictionary*, https://www.usaspending.gov/data-dictionary (last visited May 11, 2023). However, this Number of Offers Received is not always reported in the USASpending.gov data, so we supplement the data using the Federal Procurement Data System (FPDS) which is the source of the USASpending.gov data. Federal Procurement Data System, "Federal Procurement Data System," https://www fpds.gov/fpdsng_cms/index.php/en/ (last visited May 11, 2023), and Federal Procurement Data System, "FPDS-NG FAQ," https://www.fpds.gov/wiki/index.php/FPDS-NG_FAQ (last visited May 11, 2023). For some contracts, the "Number of Offers Received" is not available, so we use the "IDV Number of Offers Received" when available. Indefinite Delivery Vehicles (IDV) are contracts that allow later contracts to be arranged by the purchasing agency as needed. IDV Number of Offers refers to the number of formal bids received for the original IDV, so using this number could be overestimating the number of bidders somewhat. Federal Procurement Data System, "FPDS-Government User Manual" at 65, 157, 163-65 (Oct. 2020), https://www fpds.gov/downloads/Manuals/FPDS-NG_User_Manual_V15.pdf. We were unable to assign a number of offers to less than 0.1% of contracts by Total Current Value. Some contracts are associated with multiple Number of Offers across transactions in the FPDS so we use the median across transactions.

[102] ISAT-FCC Status & Strategy Documents. In the cited documents, the identity and number of competitors varies from month to month based on an evolving understanding by Inmarsat. Our figure relies on the last available report, as this contains the most up-to-date information.

[103] OEA staff (staff) were able to combine contractor identifiers for the most notable satellite service providers, but not all. Some contracts are doubled-counted, so we report "over 200" as our count instead of our best estimate of 241.

[104] Inmarsat Dec. 23, 2022 RFI Narrative Response at 58-75; *see also* Viasat/Inmarsat Mar. 24, 2023 White Paper at 19-20 (listing {[ ]} government sector competitors for Bulk Leasing, {[ ]} for Land Mobile, {[ ]} for Maritime, {[ ]} for Aeronautical, and {[ ]} for Handheld and Other).

[105] ISAT-FCC Status & Strategy Documents. In the cited documents, the identity and number of competitors varies from month to month based on an evolving understanding by Inmarsat. Our figures rely on the last available document reporting the opportunity in question, as this contains the most up-to-date information.

[106] USASpending.gov, *Advanced Search*, https://www.usaspending.gov/search (last visited May 11, 2023).

contracts is still 2.4 when weighted by Current Total Value.[107] As stated earlier, Viasat never faced competition in the contracts it won in the market share sample of USASpending.gov data.[108] In contracts that Inmarsat won, there were, on average, 2.0 other bidders when weighted by Current Total Value.[109]

30. *New and Potential Entry.* We also find that nascent Low Earth Orbit (LEO) and Medium Earth Orbit (MEO) competitors in satellite service are active, and becoming more active, in the government segment, and that this further lessens the likelihood of potential harms. SpaceX recently announced a new unit dedicated to U.S. military satellite services.[110] SpaceX has already signed numerous contracts with the U.S. government for satellite service from 2018 to 2023.[111] In addition, in 2022, Amazon Kuiper, together with SpaceX, won parts of a NASA satellite contract.[112] OneWeb Technologies also has several contracts with the U.S. government, including being one of the awardees of the $2.5 billion Complex Commercial SATCOM Solutions contract.[113] In 2022, OneWeb also entered into partnerships with other firms to distribute satellite service to the U.S. government.[114]

31. Based on the record before us, we find that the proposed transaction is unlikely to harm competition in government satellite services. We find that overlap between Viasat and Inmarsat is limited to certain government sub-segments, and that post-transaction, the combined company would continue to face a number of competitors in these sub-segments.

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] SpaceX, *Starshield*, https://www.spacex.com/starshield/ (last visited May 11, 2023); Micah Maidenberg and Drew Fitzgerald, *Elon Musk's SpaceX Courts Military With New Starshield Project*, Wall St. J. (Dec. 8, 2022), https://www.wsj.com/articles/elon-musks-spacex-courts-military-with-new-starshield-project-11670511020.

[111] *See, e.g.*, Joey Roulette, *Musk's Satellite Project Testing Encrypted Internet with Military Planes*, Reuters (Oct. 22, 2019), https://www reuters.com/article/us-spacex-starlink-airforce/musks-satellite-project-testing-encrypted-internet-withmilitary-planes-idUSKBN1X12KM; Sandra Erwin, *U.S. Army Signs Deal with SpaceX to Assess Starlink Broadband*, SpaceNews (May 26, 2020), https://spacenews.com/u-s-army-signs-deal-with-spacex-to-assess-starlink-broadband/; Michael Sheetz, *SpaceX Prepares for Air Force Test Connecting an Aircraft to Its Starlink Satellite Internet*, CNBC (Mar. 12, 2021), https://www.cnbc.com/2021/03/12/spacex-prepares-for-air-force-test-of-starlink-satellite-internet.html; Joey Roulette, Amazon, SpaceX snag NASA space communications contracts, Reuters (Apr. 20, 2022), https://www reuters.com/business/aerospace-defense/amazon-spacex-snag-nasa-space-communications-contracts-2022-04-20/; Sandra Erwin, *SpaceX Gets $1.9 Million Air Force Contract for Starlink Services in Europe and Africa*, SpaceNews (Aug. 15, 2022), https://spacenews.com/spacex-gets-1-9-million-air-force-contract-for-starlink-services-in-europe-and-africa/.

[112] Joey Roulette, *Amazon, SpaceX Snag NASA Space Communications Contracts*, Reuters (Apr. 20, 2022), https://www reuters.com/business/aerospace-defense/amazon-spacex-snag-nasa-space-communications-contracts-2022-04-20/.

[113] Oneweb Technologies, *Contract Vehicles*, https://onewebtechnologies.net/commercial-satcom-solutions/ (last visited May 11, 2023).

[114] Charles Lyons-Burt, *Hughes Teams with OneWeb to Deliver LEO SATCOM Data to DOD; Rick Lober Quoted*, Executive Gov (Apr. 5, 2022), https://executivegov.com/2022/04/hughes-teams-with-oneweb-to-deliver-leo-satcom-data-to-dod-rick-lober-quoted/; Ultisat, *UltiSat Continues Product Expansion Strategy by Signing Distribution Agreement with OneWeb Technologies for LEO Based Satellite Connectivity* (Apr. 26, 2022), https://ultisat.com/newsroom/ultisat-continues-product-expansion-strategy-by-signing-distribution-agreement-with-oneweb-technologies-for-leo-based-satellite-connectivity/.

2. Aviation Services

32. As discussed by the Applicants,[115] in-flight data and voice communications services (in-flight connectivity services or IFC services)[116] are sold to two different types of aviation customers: (1) commercial aviation; and (2) business aviation customers. IFC services are the main segment of aviation services in which the Applicants compete against each other.[117] For purposes of evaluating this transaction, we examine the effect of the transaction on IFC services provided on flights that originate, terminate, or otherwise stop in the United States, including domestic-focused and international-focused flights. We consider the role of all providers of IFC services, including SNOs (that operate their own satellites), SSPs (that provide satellite services and also lease additional capacity), and VARs (that resell IFC services produced by another provider). The Applicants are SSPs; they provide their own IFC services, lease capacity, and sell their IFC services directly to aviation customers, as well as to value-added resellers.[118]

33. *Commercial Aviation.* The Applicants argue that the proposed transaction will not meaningfully reduce competition for the provision of IFC services to commercial airlines serving routes that originate and/or terminate in the United States. The Applicants argue that their current aviation services do not substantially overlap and, in particular, they assert that Viasat provides IFC services for commercial aviation mainly to U.S. commercial airlines serving U.S.-domestic or intra-North American routes, while Inmarsat prioritizes global coverage over higher data speeds.[119] The Applicants point out that Inmarsat to date, has not been successful in winning any bids and thus does not provide IFC services to any U.S. airline.[120] In further support of their arguments that the Applicants do not compete on North American routes, the Applicants cite a market analyst's estimate that the market shares of Viasat and Inmarsat for commercial aviation IFC in North America in 2021 were {[ ]}%, respectively.[121]

34. We find that the proposed transaction is unlikely to result in competitive harms in the market for the provision of IFC services on commercial flights serving domestic routes in the United States. As noted by the Applicants, currently Inmarsat has not been successful in winning any bids in the provision of IFC services to U.S. commercial airlines.[122] Inmarsat believes that it failed to win commercial IFC business in the United States because {[

[115] Public Interest Supplement at 3.

[116] IFC services may include, but are not limited to, Internet access, streaming content, voice, and cockpit communication and safety-of-flight services. Viasat Dec. 23, 2022 RFI Narrative Response at 15-16, 19; Inmarsat Dec. 23, 2022 RFI Narrative Response at 14-15.

[117] Public Interest Supplement at 3.

[118] Narrative at 2; Public Interest Supplement at 3; Viasat Dec. 23, 2022 RFI Narrative Response at 17, 20; Inmarsat Dec. 23, 2022 RFI Narrative Response at 8, 14; Euroconsult, Prospects for In-Flight Entertainment and Connectivity at 62, 71-72, 74, 110 (2021).

[119] Narrative at 7; Viasat Dec. 23, 2022 RFI Narrative Response at 5-6, 17-18; Inmarsat Dec. 23, 2022 RFI Narrative Response at 7.

[120] Public Interest Supplement at 3; Narrative at 8; Viasat Dec. 23, 2022 RFI Narrative Response at 16-17; Inmarsat Dec. 23, 2022 RFI Narrative Response at 8; Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Letter from Jason D. Cruise, Latham & Watkins LLP, and Michael L. Weiner, Steptoe & Johnson LLP, to Alexis Lazda, U.S. DOJ, Antitrust Division, and Alvin Chu, U.S. DOJ, Antitrust Division at 2 (Jan. 21, 2022) (Applicants' Jan. 21, 2022 Letter to DOJ).

[121] Viasat Dec. 23, 2022 RFI Narrative Response at 16. Market shares are based on the number of active connected aircraft.

[122] Viasat/Inmarsat Mar. 24, 2023 White Paper at 2; Viasat Dec. 23, 2022 RFI Narrative Response at 6, 16; Applicants' Jan. 21, 2022 Letter to DOJ at 2.

]}.[123] Inmarsat attempted to address these concerns through a partnership with Hughes Network Systems, which allowed Inmarsat to utilize Hughes Network Systems' satellite capacity over the continental United States.[124] However, Inmarsat claims that the {[

]}.[125] In addition, there are many other providers of IFC services on commercial flights serving the United States, including Anuvu, Intelsat, Panasonic Avionics, and Thales.[126]

35. We further find that the proposed transaction is unlikely to result in competitive harms with respect to the provision of IFC services on international flights originating or terminating in the United States. Viasat reports that its market share of intercontinental flights that have a U.S. origin or destination was {[ ]}% in 2021.[127] Inmarsat's global share of all in-service, IFC-connected commercial aircraft as of the first quarter of 2021 was approximately {[ ]}%.[128] More importantly, there are many other providers of IFC services on international flights originating or terminating in the United States, including Anuvu, Intelsat, Panasonic Avionics, and Thales.[129]

36. In addition, we find that current and future entry of LEO operators into the market for the provision of IFC services on commercial flights will increase competition in this market segment.[130] OneWeb and Starlink (SpaceX) have launched LEO satellite networks that increase the capacity and coverage available for IFC services,[131] and that are expected to have a significant downward effect on capacity prices.[132] OneWeb has signed agreements with Intelsat and Panasonic Avionics for Intelsat and Panasonic Avionics to sell OneWeb's LEO satellite services to airlines worldwide.[133] Starlink has either

[123] ISAT-FCC-00106692 at ISAT-FCC-00106693 (IFC NORAM Market Update, May 2021); Inmarsat Dec. 23, 2022 RFI Narrative Response at 45.

[124] Press Release, Inmarsat, Inmarsat and Hughes Bring Unrivalled Inflight Connectivity to North American Airlines and Passengers (Oct. 20, 2020), https://www.inmarsat.com/en/news/latest-news/aviation/2020/inmarsat-and-hughes-bring-unrivalled-inflight-connectivity-to-no html; ISAT-FCC-00108737 at ISAT-FCC-00108738 (Strategic Collaboration Agreement, Oct. 2020); ISAT-FCC-00106692 at ISAT-FCC-00106693 (IFC NORAM Market Update, May 2021); Inmarsat Dec. 23, 2022 RFI Narrative Response at 45; Applicants' Jan. 21, 2022 Letter to DOJ at 2.

[125] Inmarsat Dec. 23, 2022 RFI Narrative Response at 45.

[126] Public Interest Supplement at 3; Viasat Dec. 23, 2022 RFI Narrative Response at 16; VIA-2R-000637283 (Valour Consultancy Commercial Aviation Data, June 2021).

[127] Viasat Dec. 23, 2022 RFI Narrative Response at 18. Viasat does not specify whether these market share data are based on the number of connected aircraft or some other measure.

[128] VIA-2R-000637283 (Valour Consultancy Commercial Aviation Data, June 2021). We note that this is likely an overestimate of its share of intercontinental flights that have a U.S. origin or destination.

[129] Based on staff analysis of documents and data submitted by the Applicants, including VIA-2R-001450967 (Valour Consultancy Commercial Aviation Data, Jan. 2022), along with data obtained from external sources.

[130] *See, e.g.*, Viasat/Inmarsat Mar. 24, 2023 White Paper at 9; Applicants' Jan. 21, 2022 Letter to DOJ at 3-4.

[131] Inmarsat Dec. 23, 2022 RFI Narrative Response at 28, 38-39; s*ee also* Euroconsult, Prospects for In-Flight Entertainment and Connectivity at 57 (2021) (Euroconsult).

[132] *See, e.g.*, Euroconsult at 57.

[133] OneWeb, *Intelsat and OneWeb partnership brings multi-orbit connectivity to airlines worldwide* (Aug. 11, 2022), https://oneweb.net/resources/intelsat-and-oneweb-partnership-brings-multi-orbit-connectivity-airlines-worldwide; Intelsat, *Intelsat and OneWeb partnership brings multi-orbit connectivity to airlines worldwide* (Aug. 11, 2022), https://www.intelsat.com/newsroom/intelsat-and-oneweb-partnership-brings-multi-orbit-connectivity-to-airlines-worldwide/; OneWeb, *OneWeb and Panasonic Avionics Corporation to deliver low Earth orbit (LEO) connectivity to airlines worldwide* (Oct. 17, 2022), https://oneweb net/resources/oneweb-and-panasonic-avionics-

(continued….)

begun or will begin providing IFC services to a number of commercial airlines including {[ ]}, Hawaiian Airlines, JSX, airBaltic, and Zipair.[134]

37. *Business Aviation.* The Applicants argue that the proposed transaction will not result in competitive harm for the provision of IFC services to U.S. business aviation customers.[135] They assert that Viasat and Inmarsat had estimated shares of {[ ]}% and {[ ]}%, respectively, of North American business aviation broadband IFC services customers in 2021.[136] They further claim that many business aircraft served by Inmarsat cannot be served by the Viasat Ka-band terminals employed for commercial aircraft.[137] Finally, they assert that the provision of IFC services for business aviation is highly competitive.[138]

38. We find that the proposed transaction is unlikely to result in competitive harms to the provision of IFC services on business flights serving the United States. In this segment, Gogo, Iridium, and Inmarsat have the largest presence with market shares of {[ ]}%, while Viasat has a *de minimis* market presence.[139] We note that in this segment, VARs provide value-added services that business aviation customers require, and as such control access to these customers.[140] Further, and similarly to commercial aviation, we find that current and future entry of LEO operators into the provision of IFC services in business aviation will likely increase competition. For example, Gogo and OneWeb announced a partnership in 2022 which will allow Gogo to utilize OneWeb's LEO network to provide global IFC service to business flights.[141] OneWeb has also partnered with Satcom Direct, a

corporation-deliver-low-earth-orbit-leo-connectivity; Panasonic, *OneWeb and Panasonic Avionics Corporation to Deliver Low Earth Orbit (LEO) Connectivity to Airlines Worldwide* (Oct. 18, 2022), https://www.panasonic.aero/press-release/panasonic-leo/.

[134] Viasat/Inmarsat Mar. 24, 2023 White Paper at 7-8; Hawaiian Airlines, *Hawaiian Airlines to Offer Free, High-Speed Starlink Internet Connectivity on Transpacific Fleet* (Apr. 25, 2022), https://newsroom.hawaiianairlines.com/releases/hawaiian-airlines-to-offer-free-high-speed-starlink-internet-connectivity-on-transpacific-fleet; Mary Kirby, *SpaceX's Starlink inflight Internet now active on JSX jet*, Runway Girl Network (Dec. 13, 2022), https://runwaygirlnetwork.com/2022/12/spacex-starlink-jsx-jet/; airBaltic, *airBaltic to equip entire fleet with SpaceX's Starlink* (Jan. 10, 2023), https://www.airbaltic.com/en/airbaltic-to-equip-entire-fleet-with-spacex-starlink; ZIPAIR, *ZIPAIR to become the first airline in Asia to work with SpaceX to Provide Innovative High-Speed, Low-Latency Internet in the Skies* (Jan. 30, 2023), https://www.zipair net/en/notification/151.

[135] Public Interest Supplement at 3.

[136] Viasat Dec. 23, 2022 RFI Narrative Response at 21. Market shares are based on the number of connected business aircraft, but it is unclear if the shares are based only on U.S. airlines or on all airlines that serve the United States.

[137] Viasat Dec. 23, 2022 RFI Narrative Response at 20; Public Interest Supplement at 4.

[138] Public Interest Supplement at 3; Inmarsat Dec. 23, 2022 RFI Narrative Response at 16.

[139] Viasat Dec. 23, 2022 RFI Narrative Response at 21. Market shares are based on the number of connected business aircraft, but it is unclear if the shares are based only on U.S. airlines or on all airlines that serve the United States. Further, even if we consider solely the provision of IFC services on international, business flights serving North America, we find that the proposed transaction is unlikely to result in competitive harms. Excluding ATG providers on the basis that they cannot provide IFC service on transoceanic flights, we estimate the market shares of Iridium, Inmarsat, and Viasat to be {[ ]}%, respectively.

[140] According to Viasat, prominent value-added resellers such as Satcom Direct, Honeywell Forge, and Collins ARINCDirect have achieved a {[ ]}. VIA-2R-000720150 at VIA-2R-000720150 (Business Aviation – Global Sales Strategy, Oct. 2021).

[141] Viasat/Inmarsat Mar. 24, 2023 White Paper at 13; OneWeb, *OneWeb partners with Gogo Business Aviation to revolutionise in-flight connectivity for business jet users worldwide* (May 23, 2022), https://oneweb net/resources/oneweb-partners-gogo-business-aviation-revolutionise-flight-connectivity-business-jet.

prominent VAR, to allow Satcom Direct to market and sell OneWeb's inflight broadband services.[142] Further, Starlink has plans to provide IFC services to private jets.[143]

39. Based on the record before us, we find few concerns about competitive harms resulting from the transaction with respect to either commercial aviation or business aviation. Given limited overlap between the Applicants, as well as the likelihood of increased competition from nascent entities and new entrants, we believe that any price effects would be low.

3. Maritime and Energy Services

40. Maritime communications services consist of communications services to mobile vessels, including merchant, passenger, leisure and fishing vessels, as well as to fixed offshore sites.[144] The Applicants explain that, whereas Inmarsat offers service to many maritime customers globally using its Ka-band and L-band networks, Viasat only has a small presence in the provision of services to mobile vessels.[145] Moreover, the Applicants claim that, while Viasat serves offshore drilling rigs and production platforms, Inmarsat only has a limited offshore energy service presence through its provision of services to offshore support vessels.[146]

41. Inmarsat asserts that maritime services may also be divided into high-bandwidth, high-capacity broadband products and narrowband products consisting of low-frequency, low-bandwidth, low-throughput connectivity.[147] It notes that Inmarsat uses the L-band to provide narrowband services and that Viasat does not provide narrowband service to maritime customers.[148] Viasat claims that its existing Ka-band network currently is ill-suited for most maritime applications and that the company lacks global coverage required to ensure connectivity in ocean shipping lanes.[149] The Applicants assert there is competition from satellite, submarine cable and mobile broadband providers,[150] including Marlink, KVH, MarineSat, NSSL Global, Satcom Global, Speedcast, Navarino, Orange, OTE, Telenor, SES, Anuvu, AST, and others.[151]

42. Maritime comprises a large part of Inmarsat's global business. We estimate that maritime accounts for 37% of its 2021 global revenue, or approximately $500 million.[152] However,

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[142] Satcom Direct, *Satcom Direct, OneWeb, and QEST ratify development of Electronic Phased Array antenna together* (May 23, 2022), https://www.satcomdirect.com/news/sd-plane-simple-partnership-flat-panel/.

[143] Joey Roulette, *SpaceX rolls out Starlink internet service for private jets*, Reuters (Oct. 19, 2022), https://www reuters.com/technology/spacex-rolls-out-starlink-internet-service-private-jets-2022-10-19/.

[144] Public Interest Supplement at 4; Viasat Dec. 23, 2022 RFI Narrative Response at 26.

[145] Public Interest Supplement at 4.

[146] *Id.*

[147] Inmarsat Dec. 23, 2022 RFI Narrative Response at 48.

[148] Inmarsat Dec. 23, 2022 RFI Narrative Response at 48; *see also* Viasat Dec. 23, 2022 RFI Narrative Response at 26.

[149] Viasat Dec. 23, 2022 RFI Narrative Response at 26.

[150] *See, e.g.*, Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Letter from Jason D. Cruise, Latham & Watkins LLP, and Michael L. Weiner, Steptoe & Johnson LLP, to Alvin Chu, U.S. DOJ, Antitrust Division at 2-3 (Jan. 26, 2022) (Applicants' Jan. 26, 2022 Letter to DOJ) (*see* Table 1 and Competitive Landscape chart, which, in addition to {[

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[151] Inmarsat Dec. 23, 2022 RFI Narrative Response at 51-53; Viasat Dec. 23, 2022 RFI Narrative Response at 27.

[152] Inmarsat, Connect BidCo Limited Annual Report and Accounts 2021 at 28, https://www.inmarsat.com/content/dam/inmarsat/corporate/documents/corporate/sustainability/how-we-do-business/annualreport/ConnectBidco_FY21_AnnualReportandAccounts_Final.pdf.coredownload.pdf ("[Maritime]

(continued….)

Applicants' documents show that, in North America in most maritime segments, both Inmarsat and Viasat have either a limited presence or do not compete with one another. Because, as we noted above, Viasat does not offer narrowband service to maritime customers, the Applicants only compete in the provision of maritime broadband connectivity.[153]

43. In 2021, Inmarsat provided broadband connectivity to only {[ ]} North American vessels across the merchant, passenger, leisure, and fishing categories, with {[ ]} of these being merchant or fishing vessels, which Viasat does not serve.[154] Similarly, the Applicants' documents indicate that Viasat provided communication service to only {[ ]} leisure and passenger vessels, with North American revenues of approximately {[ ]} million.[155] The Applicants each also provide connectivity to a limited number of offshore support vessels serving the United States, with Viasat and Inmarsat, respectively, serving {[ ]} and {[ ]} vessels.[156] This is in comparison to the over ten thousand broadband connected North American maritime vessels in 2021.[157] Aggregating across the various classes of vessels, the Applicants' combined share of North American broadband connected vessels is extremely small, approximately {[ ]}%, and we conclude that the proposed transaction would not have a significant impact on competition in this market segment. Inmarsat's internal documents provide additional evidence that competition between the Applicants to serve maritime vessels is limited.[158]

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revenue continued to stabilise, increasing by 3.2% ($15.5m)," which we convert to an annual revenue figure as follows: $500 million = $15.5 million + $15.5 million / 3.2%. To obtain the maritime proportion relative to total revenue, staff divide $500 million by Inmarsat's 2021 reported revenue of $1.35 billion.); *see also* Inmarsat Dec. 23, 2022 RFI Narrative Response at 48.

[153] Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Letter from Jason D. Cruise, Latham & Watkins LLP, and Michael L. Weiner, Steptoe & Johnson LLP, to Alvin Chu, U.S. DOJ, Antitrust Division at 2 (Mar. 30, 2022) (Applicants' Mar. 30, 2022 Letter to DOJ); Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Viasat/Inmarsat, *Relevant Services" in the Second Request, Presentation to Department of Justice, Antitrust Division* at 4 (Mar. 28, 2022) (Viasat/Inmarsat Mar. 28, 2022 Presentation).

[154] Inmarsat Dec. 23, 2022 RFI Narrative Response at 48; Viasat Dec. 23, 2022 RFI Narrative Response at 26; Applicants' Mar. 30, 2022 Letter to DOJ at 1-2.

[155] Applicants' Mar. 30, 2022 Letter to DOJ at 1-2; *see also* Viasat/Inmarsat Mar. 28, 2022 Presentation at 4; VIA-2R-001040555 at VIA-2R-001040557 (Maritime Strategy, Global Enterprise & Mobility, Aug. 24, 2021). Viasat did not formally launch its maritime business until November of 2020. Although Viasat sought to expand maritime services, it acknowledged that it was a nascent competitor {[ ]}. By comparison, Viasat viewed {[ ]}. VIA-2R-001040555 (Maritime Strategy, Global Enterprise & Mobility, Aug. 24, 2021); VIA-2R-000001750 at VIA-2R-000001758 (Board of Directors, Strategic Plan FY22-26 Update, Dec. 2020); *see also* Viasat, *Viasat and Cobham Satcom Announce Strategic Collaboration on Maritime Connectivity System Ahead of ViaSat-3* (Nov. 10, 2022), https://news.viasat.com/blog/gem/viasat-and-cobham-satcom-announce-strategic-collaboration-on-maritime-connectivity-system-ahead-of-viasat-3.

[156] Viasat/Inmarsat Mar. 28, 2022 Presentation at 7.

[157] This figure consists of approximately {[ ]} merchant, passenger, leisure, and fishing vessels and approximately {[ ]} offshore support vessels. Applicants' Mar. 30, 2022 Letter to DOJ at 1; Viasat/Inmarsat Mar. 28, 2022 Presentation at 7. The aggregate number of offshore support vessels does not account for vessels buying cellular service. We note, however, that it is unclear that excluding mobile coverage overstates the Applicants' market shares because both Viasat and Inmarsat have partnered with other service providers to offer LTE-based service. *See, e.g.*, Press Release, T-Mobile, T-Mobile Lights Up LTE in the Gulf of Mexico – Another Un-carrier First (July 24, 2019), https://www.t-mobile.com/news/press/lte-in-gulf-of-mexico; Press Release, Inmarsat, Inmarsat Fleet LTE Service Coverage Extended to Gulf of Mexico Following Successful Trials with V.Ships Offshore (Sept. 24, 2020), https://www.inmarsat.com/en/news/latest-news/maritime/2020/inmarsat-fleet-lte-service-coverage-extended-to-gulf-of-mexico-f html.

[158] Inmarsat documents {[

(continued….)

44. The Applicants likewise largely do not compete to serve fixed offshore sites in the energy segment. Viasat competes in this segment through its acquisition of RigNet, which primarily serves fixed sites like offshore drilling rigs and production platforms that require high bandwidth.[159] By contrast, when Inmarsat sold RigNet in 2014, it divested substantially all of its retail energy broadband assets.[160] Further, RigNet's records show that Inmarsat is not a meaningful competitor to Viasat's energy business.[161] The energy segment is also facing increasing competition from nascent LEO and MEO competitors. For example, OneWeb and Tampnet have signed a Memorandum of Understanding to evaluate network capabilities in the offshore energy environment.[162] Starlink, which has begun offering maritime communications services globally,[163] has contracted with offshore companies and VARs serving the offshore segment.[164]

45. Based on the record, we find that the Applicants do not compete in most segments of maritime communications services. Where the Applicants do compete, they generally have a small market presence, and face competition from existing service providers using different technologies. In addition, we find that the Applicants face increasing competition from nascent and new service providers.

]}. *See, e.g.*, ISAT-FCC-00103608 at ISAT-FCC-00103608-10 (MBU Growth Strategy, Strategic Growth Options and Tools, May 28, 2021) ({[

]}); ISAT-FCC-00100116 at ISAT-FCC-00100122, ISAT-FCC-00100148 (Monthly Management Report, Jan. 2021); ISAT-FCC-00100409 at ISAT-FCC-00100441 (Monthly Management Report, Feb. 2021); ISAT-FCC-00110506 at ISAT-FCC-00110512 (Monthly Management Report, Mar. 2022); ISAT-FCC-00110696 at ISAT-FCC-00110702, ISAT-FCC-00110721 (Monthly Management Report, May 2022); ISAT-FCC-00111834 at ISAT-FCC-00111840 (Monthly Management Report, July 2022); ISAT-FCC-00112038 at ISAT-FCC-00112044 (Monthly Management Report, Aug. 2022) (discussing {[

]}). Internal Inmarsat documents indicate that Inmarsat views {[ ]}. ISAT-FCC-00100116 at ISAT-FCC-00100122 (Monthly Management Report, Jan. 2021); *see also* ISAT-FCC-00112650 at ISAT-FCC-00112656 (Monthly Management Report, Nov. 2022). However, Inmarsat also notes {]}. *See, e.g.*, ISAT-FCC-00110696 at ISAT-FCC-00110736 (Monthly Management Report, May 2022) ({[

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[159] Press Release, Viasat, Viasat Completes Acquisition of RigNet (Apr. 30, 2021), https://investors.viasat.com/news-releases/news-release-details/viasat-completes-acquisition-rignet; Public Interest Supplement at 4.

[160] Press Release, Inmarsat, Inmarsat Completes Sale of Inmarsat Retail Energy Operations to RigNet (Feb. 3. 2014), https://www.inmarsat.com/en/news/latest-news/corporate/2014/6922.html; Applicants' Jan. 26, 2022 Letter to DOJ at 2.

[161] Applicants' Jan. 26, 2022 Letter to DOJ at 2 ({[

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[162] Press Release, Tampnet, Tampnet and OneWeb sign agreement to further develop the next generation of offshore connectivity capabilities (Oct. 27, 2021), https://www.tampnet.com/press/tampnet-and-oneweb-sign-agreement-to-further-develop-the-next-generation-of-offshore-connectivity-capabilities.

[163] *See, e.g.*, ISAT-FCC-00112446 at ISAT-FCC-00112452 (Inmarsat Monthly Management Report, Oct. 2022); ISAT-FCC-00113046 at 7 (Inmarsat Monthly Management Report, Jan. 2023).

[164] *See, e.g.*, Nadja Skopljak, *Solstad vessels to trial Starlink connectivity* (Jan. 11, 2023), https://www.offshore-energy.biz/solstad-vessels-to-trial-starlink-connectivity/; Castor Marine, *Starlink is a High-speed, low-latency internet with up to 350/40Mbps while at sea*, https://castormarine.com/starlink (last visited May 11, 2023).

VI. POTENTIAL PUBLIC INTEREST BENEFITS

46. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits. As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits, such as giving the merged firm greater spectrum density and diversity, as well as service enhancements and certain other efficiencies. Because of these anticipated benefits, we find that overall the transaction is in the public interest.

47. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms "if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[165] The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighted against potential harms. First, the claimed benefit must be transaction-specific—meaning it naturally arises as a result of the transaction and likely could not be accomplished in the absence of the transaction.[166] Second, the claimed benefit must be verifiable.[167] Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.[168] Third, the Commission is more likely to find marginal cost reductions to be cognizable than reductions in fixed cost as, in general, reductions in marginal cost are more likely to result in lower prices for consumers.[169] In addition, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.[170] Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims.[171] Under this sliding scale approach, where potential harms appear both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand. On the other hand, where potential harms appear less likely and less substantial, the Commission will accept a lesser showing.[172]

48. The Applicants generally contend that a combined Viasat and Inmarsat will enable Viasat-Inmarsat to offer more valuable satellite services and better compete for customers than either firm

[165] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214.

[166] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 273; *2010 DOJ/FTC Horizontal Merger Guidelines*, § 10 at 29-31.

[167] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 274.

[168] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 274. In addition, "the magnitude of benefits must be calculated net of the cost of achieving them."

[169] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10672, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237-38, para. 275.

[170] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17026, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10672, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 274.

[171] *See, e.g.*, *AT&T-DIRECTV Order*, 29 FCC Rcd at 9238, para. 276; *see also CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586, para. 11 & n.36.

[172] *See, e.g.*, *AT&T-DIRECTV Order*, 29 FCC Rcd at 9238, para. 276; *cf. 2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31.

could on a standalone basis.[173] The Applicants contend that public benefits will arise from: (1) reductions in satellite capacity fees paid to third parties, thereby reducing the marginal costs of delivering satellite services and eliminating double marginalization; (2) greater spectrum diversity and density of coverage; (3) additional satellite capacity; (4) service innovations and service-quality improvements; (5) enhanced competitive position of Viasat-Inmarsat; and (6) other efficiencies.

49. *Reductions in Third-Party Satellite Fees and Elimination of Double Marginalization.* The Applicants argue that the combination of Viasat's and Inmarsat's satellite networks will eliminate double marginalization, resulting in a substantial reduction of incremental network costs to serve the combined Viasat-Inmarsat's customers.[174] Inmarsat claims that it spent {[ ]} million for third-party capacity to support its U.S. government business across its network in 2021 and is forecast to spend {[ ]} million for third-party capacity in 2023 to support its commercial business.[175] Viasat explains that "[b]y reducing its spending on third-party capacity, the combined company will be able to lower its marginal costs, a benefit that . . . can be expected to translate into lower prices for customers."[176] Viasat asserts that it "currently pays nearly {[ ]} million annually to augment its own satellite capacity with third-party capacity for aviation and U.S. government-related usage."[177] As of March 2023, Viasat states, "Currently, the parties spend a combined {[ ]} million annually to third parties for additional satellite capacity."[178]

50. Where a merger involves a vertical component and the upstream and downstream entities enjoy some market power, the vertical integration resulting from the merger may reduce downstream prices, because the merged entity, in setting the downstream price, will consider the true economic marginal cost of the input rather than the higher price (including upstream profit margin) charged by the non-integrated firm pre-merger.[179] Here, however, the Applicants have neither demonstrated the upstream and downstream price-cost margins, nor have they presented any estimate of the pass-through rates downstream.[180] In addition, the Applicants failed to consider whether the up-stream true economic marginal cost includes the opportunity cost of not selling the upstream capacity to independent downstream competitors.[181] Consequently, we will not credit this claimed benefit.

51. *Greater Spectrum Density and Diversity.* The Applicants assert that combining Viasat's and Inmarsat's satellite constellations offers efficiencies beyond cost reductions, namely more resilient,

[173] The Applicants assert, "By facilitating the combined company's provision of new and enhanced services, the Proposed Transaction will allow it to compete more effectively in the already robustly competitive marketplace." Narrative at 9; *see also* Inmarsat Dec. 23, 2022 RFI Narrative Response at 4, 5, 8; Viasat Dec. 23, 2022 RFI Narrative Response at 7, 11, 12.

[174] Inmarsat Dec. 23, 2022 RFI Narrative Response at 10; Viasat Dec. 23, 2022 RFI Narrative Response at 8-9.

[175] Inmarsat Dec. 23, 2022 RFI Narrative Response at 10.

[176] Viasat Dec. 23, 2022 RFI Narrative Response at 8-9.

[177] *Id.* at 9.

[178] Viasat/Inmarsat Mar. 24, 2023 White Paper at 26.

[179] *See General Motors Corp. Hughes Electronics Corp., and The News Corp. Ltd.*, MB Docket No. 03-124, Memorandum Opinion & Order, 19 FCC Rcd 473, 507 para. 70 (2004) (*News-Hughes Order*); Patrick Rey & Thibaud Verge, *Economics of Vertical Restraints*, Handbook of Antitrust Economics 353, 360 (Paolo Buccirossi, ed., 2008).

[180] *See, e.g.*, *News-Hughes Order*, 19 FCC Rcd at 507, para. 70 & n.223 (noting that the degree of the benefit of the elimination of double marginalization will depend crucially on the elasticity of demand for the downstream product).

[181] *See, e.g.*, Carl Shapiro, *Vertical Mergers and Input Foreclosure Lessons from the AT&T/Time Warner Case,* 59 Rev. Ind Org. 303, 325 (2021) (explaining that the true economic marginal cost must account for "opportunity cost and must account for other factors, such as limited upstream capacity").

robust, and uniform satellite coverage across the globe.[182] For example, although Viasat claims vast experience with L-band technology and services,[183] Viasat currently lacks L-band satellite capacity of its own.[184] Inmarsat claims that it will provide Viasat with satellites that supply L-band capacity and that combining Inmarsat's L-band capacity with Viasat's existing business will enable the combined company "to offer a more valuable solution with a better set of capabilities to its customers."[185] Among the advantages of using the L-band are its better propagation characteristics, which means that it is favored by the maritime community,[186] and the fact that it uses smaller antennas, which makes them particularly well-suited for tactical and mobile operation.[187] For these reasons, L-band antennas are used in various safety applications, including flight tracking; critical voice communication; restoring communications after natural disasters; medical evacuation; and in-flight transmission of critical patient data.[188] Adding L-band to its portfolio of services is, therefore, one way in which Viasat-Inmarsat might provide more resilient, robust coverage, particularly to first responders, emergency medical services and other user communities that value resilience, robustness, and reliability. Viasat adds that it "plans to use Inmarsat's satellites to create a new hybrid model that will incorporate L-band capacity and service both broadband and narrowband applications."[189] We find that the greater spectrum density and diversity flowing from this merger is a cognizable public interest benefit.

52. *Additional Satellite Capacity.* The Applicants argue that the proposed transaction "will result in network and service quality synergies that will enable the combined entity to better meet customer demands,"[190] including the needs of business aviation IFC and the U.S. government

[182] Inmarsat Dec. 23, 2022 RFI Narrative Response at 7-8; Viasat Dec. 23, 2022 RFI Narrative Response at 4-6; Viasat/Inmarsat Mar. 24, 2023 White Paper at 25.

[183] Viasat, *L-band: A Viasat technology quietly making a difference* (Mar. 29, 2019), https://news.viasat.com/blog/scn/l-band-a-viasat-technology-quietly-making-a-difference; *see also* VIA-2R-004588620 at VIA-2R-004588624 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[184] *See* FCC, Approved Space Station List, https://www.fcc.gov/approved-space-station-list (last visited May 11, 2023).

[185] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6; *see also* VIA-2R-002735777 at VIA-2R-002735794-95 (Connecting the World, JP Morgan HY Conference, Mar. 2022); VIA-2R-004348666 at VIA-2R-004348674 (Connecting the World, Nov. 2021).

[186] Axess Networks, *L-Band Satellite Frequency: Countless Advantages For Satellite Communication* (Sept. 17, 2019), https://axessnet.com/en/l-band-satellite-frequency-countless-advantages-for-satellite-communication/; Cobham, *What is L-band?*, https://sync.cobham.com/satcom/knowledge-library/getting-started-on-satellite-communications/what-is-l-band/ (last visited May 11, 2023); *see also* VIA-2R-004348666 at VIA-2R-004348674 (Connecting the World, Nov. 2021).

[187] The tradeoff with the higher frequencies is that, while they grant the initial possibility of carrying more information, they need more power to avoid blockages and larger, heavier antennas. Axess Networks, *L-Band Satellite Frequency: Countless Advantages For Satellite Communication* (Sept. 17, 2019), https://axessnet.com/en/l-band-satellite-frequency-countless-advantages-for-satellite-communication.

[188] Viasat, *L-band: A Viasat technology quietly making a difference* (Mar. 29, 2019), https://news.viasat.com/blog/scn/l-band-a-viasat-technology-quietly-making-a-difference.

[189] Viasat Dec. 23, 2022 RFI Narrative Response at 11.

[190] Viasat Dec. 23, 2022 RFI Narrative Response at 6; *see also* VIA-2R-002735777 at VIA-2R-002735802 (Connecting the World, JP Morgan HY Conference, Mar. 2022); VIA-2R-004588620 at VIA-2R-004588627, VIA-2R-004588630-31, VIA-2R-004588637 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021); ISAT-FCC-00107243 at ISAT-FCC-00107247 (Barclays, Project Norman, Avascent Call, Jan. 13, 2021); ISAT-FCC-00107956 at ISAT-FCC-00107960 ("Sam" and "Norman" Comparison, June 3, 2021); ISAT-FCC-00107233 (Barclays, Project Norman Synergies, Jan. 2021); ISAT-FCC-00107772 (Project Norman Pros & Cons, no date available); ISAT-FCC-00108086 (Norman Synergies email, Sept. 7, 2021); ISAT-

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customers.[191] Viasat argues that each of the Applicants lack sufficient satellite capacity in key market segments.[192] Viasat asserts that it currently lacks sufficient satellite coverage outside of North America to support intercontinental flights.[193] Inmarsat similarly claims that it has no contracts with U.S.-based commercial airlines due in large part to poor capacity over North America,[194] and that Inmarsat's North American business aviation customers have {[ ]}.[195] Inmarsat {[ ]} over key U.S. cities, including the Northeast corridor, that U.S. airlines seek.[196] As a result, Inmarsat's slower connectivity is unappealing to U.S.-based airlines, who demand fast, reliable connectivity where they fly the most.[197] In contrast, Viasat's satellite capacity is concentrated over North America: Viasat uses multiple satellites to provide broadband connectivity in North America, but "has no satellite coverage over other key regions, including the Arctic and Pacific Ocean."[198] The extended global coverage achieved by appending Inmarsat's thin-but-broad global coverage to Viasat's denser domestic coverage means the combined Viasat-Inmarsat would be able to compete more effectively.[199]

53. The Applicants further claim that the combined Viasat-Inmarsat will be better able to manage its network assets to serve growing demand.[200] For example, Inmarsat claims that the combined entity will have more options to allocate power to specific beams to meet peak demand dynamically,[201] giving it more flexibility to allocate capacity to meet consumer demand by virtue of coordinating a wider array of satellites.[202] According to Viasat, better optimization of the combined satellite network and

FCC-00107738 at ISAT-FCC-00107745-47 (Project Norman, Network and Government Discussion, Jan. 11, 2021); ISAT-FCC-00107964 at ISAT-FCC-00107968, ISAT-FCC-00107972-73 (Sam and Norman, Deal Rationale and Industrial Logic, July 2021).

[191] Viasat Dec. 23, 2022 RFI Narrative Response at 6-7; *see also* ISAT-FCC-00107964 at ISAT-FCC-00107968 (Sam and Norman, Deal Rationale and Industrial Logic, July 2021); Viasat/Inmarsat Mar. 24, 2023 White Paper at 25-26.

[192] Viasat Dec. 23, 2022 RFI Narrative Response at 6-7; Viasat/Inmarsat Mar. 24, 2023 White Paper at 25.

[193] Viasat Dec. 23, 2022 RFI Narrative Response at 6; *see also* Viasat/Inmarsat Mar. 24, 2023 White Paper at 15 ("{]}. In Viasat's experience, end users are pushing for {[ ]} systems, even going so far as to publicly post {]}").

[194] Viasat Dec. 23, 2022 RFI Narrative Response at 6; Viasat/Inmarsat Mar. 24, 2023 White Paper at 2.

[195] ISAT-FCC-00103868 (Phillippe Carette email Re: Final GX North American BGA Paper, Dec. 12, 2021).

[196] Viasat/Inmarsat Mar. 24, 2023 White Paper at 2-3.

[197] Viasat/Inmarsat Mar. 24, 2023 White Paper at 3.

[198] Viasat Dec. 23, 2022 RFI Narrative Response at 4-5.

[199] Viasat Dec. 23, 2022 RFI Narrative Response at 5-6.

[200] Inmarsat Dec. 23, 2022 RFI Narrative Response at 5-6; Viasat Dec. 23, 2022 RFI Narrative Response at 6.

[201] Inmarsat Dec. 23, 2022 RFI Narrative Response at 5-6 ("For instance, the combined company can utilize the Inmarsat satellites as baseload, and then, direct its higher density, smaller area beams in real time to any area where demand starts to increase (such as from an increase in the number of aircraft). This will allow the combined company to sell more during periods of average demand—and add more customers accordingly—knowing that it can meet peak demand in specific areas when needed.").

[202] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6 ("For instance, if Viasat and Inmarsat both have an area with low peak demand and low average demand, and both had been committing beams to this area, the combined company could divert one of the beams to a different, higher demand area. This would allow the combined firm to subscribe more customers (i.e., output expanding) and provide a higher level of service to existing customers.").

innovative strategies to match capacity to demand could yield a {[ ]} increase in efficiency from a given beam.[203]

54. Internal documents produced by the Applicants support the argument that the Viasat and Inmarsat fleets would complement each other, with Inmarsat providing a blanket of thin, global coverage and Viasat providing dense capacity overlays in high-demand regions.[204] We find that the gains in efficiency and capacity flowing from this merger are a cognizable public interest benefit.

55. *Service Innovations and Service-Quality Improvements.* Viasat claims that increased capacity resulting from the proposed transaction also would allow the merged company to offer enhanced services to meet existing and evolving customer demands, such as mobile satellite communications services.[205] Similarly, Inmarsat asserts that post-merger, it would provide Viasat with new technology and types of satellite capacity that would enable Viasat to enter "new business segments and offer new applications that require narrowband connectivity, including mobile Internet of things applications, and maritime and aviation safety communications."[206] The Applicants further claim that that the transaction "would allow the combined firm to subscribe more customers and provide a higher level of service to existing customers."[207]

56. Internal documents produced by the Applicants support these claimed benefits.[208] Although the Applicants have not attempted to quantify the value of these synergies, we nevertheless find that the merger is likely to result in service enhancements that constitute a public interest benefit.

57. *Enhanced Competitive Position of Viasat-Inmarsat.* The Applicants maintain that the proposed transaction will allow the merged entity to compete more effectively in the already robustly competitive satellite communications marketplace by facilitating the combined company's provision of new and enhanced services.[209] The merged entity will operate a fleet of eleven geostationary Ka-band satellites, various L-band satellites, two hybrid L-/Ka-band satellites, an S-band satellite,[210] and have several Ka-band satellites planned for launch over the next three years.[211] The Applicants further claim

[203] Viasat/Inmarsat Mar. 24, 2023 White Paper at 25.

[204] *See, e.g.*, VIA-2R-004348659 at VIA-2R-004348659 (Industry Brief, Viasat + Inmarsat: One-Off or Catalyst for Consolidation?, Nov. 9, 2021); VIA-2R-004588620 at VIA-2R-004588625 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[205] Viasat Dec. 23, 2022 RFI Narrative Response at 13.

[206] Inmarsat Dec. 23, 2022 RFI Narrative Response at 8; *see also* VIA-2R-004348666 at VIA-2R-004348672 (Connecting the World, Nov. 2021); VIA-2R-004588620 at VIA-2R-004588624 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[207] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6.

[208] *See, e.g.*, Viasat/Inmarsat Mar. 24, 2023 White Paper at 25-26; VIA-2R-004588620 at VIA-2R-004588622, VIA-2R-004588624-26, (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021); *see also* VIA-2R-004348666 at VIA-2R-004348680 (Viasat + Inmarsat, Connecting the World, Nov. 2021).

[209] Viasat Dec. 23, 2022 RFI Narrative Response at 7, 12; Inmarsat Dec. 23, 2022 RFI Narrative Response at 8.

[210] Viasat, *Satellite fleet*, https://www.viasat.com/space-innovation/satellite-fleet (last visited May 11, 2023); Viasat, *Viasat Global Ka-band Coverage*, https://www.viasat.com/space-innovation/satellite-fleet/global-satellite-internet/ (last visited May 11, 2023); Inmarsat, *Satellites*, https://www.inmarsat.com/en/about/technology/satellites.html (last visited May 11, 2023); Inmarsat, *I-6 Satellites*, https://www.inmarsat.com/en/about/technology/satellites/i-6 html (last visited May 11, 2023).

[211] Viasat Dec. 23, 2022 RFI Narrative Response at 8; Inmarsat Dec. 23, 2022 RFI Narrative Response at 9.

that, in the long term, the Viasat-Inmarsat network would benefit the public by counter-balancing low and medium-earth orbit competitors like SpaceX, OneWeb, and Amazon's forthcoming Project Kuiper.[212]

58. Internal documents produced by the Applicants confirm not only that the Viasat and Inmarsat fleets would complement each other, but also that the merger would give the combined entity the scale to invest more effectively in research and development and network infrastructure.[213] The ability to enhance growth and innovation and offer new and better services to customers could increase the competitiveness of both Viasat and Inmarsat.[214] While the Applicants do not attempt to quantify these benefits, we nevertheless find it a cognizable public interest benefit of the merger.

59. *Other Efficiencies.* Viasat and Inmarsat assert that the combined post-transaction satellite constellation will deliver improved reliability, resiliency, and redundancy to customers in adverse weather or other conditions, in cases of unforeseen outages and planned or emergency maintenance work, during periods of high demand, when planes are prevented from accessing specific satellites, and at the edges of coverage areas.[215] As discussed above, the addition of the L-band could certainly confer reliability, resiliency, and redundancy to the combined entity's satellite services, particularly in adverse weather. Although the Applicants do not attempt to quantify these claimed benefits, we nevertheless find them to be cognizable public interest benefits of the proposed transaction.

60. Finally, Inmarsat asserts that the proposed transaction "will enable the combined company to achieve substantial ongoing operating cost savings, including by meaningfully consolidating its ground network. In conjunction with the reduced expenditures on third-party capacity, these and other savings may amount to approximately {[ ]} million per year."[216] Viasat adds that the combined company "expects to save approximately {[ ]} million annually on back office and ground network costs (managing two networks as one) as well as {[ ]} million per year over the next 3 years on capital expenditures for duplicative outlays, plus {[ ]} million each year starting in 2026," which can be used to lower prices.[217] The parties fail to indicate, however, whether these projected savings are in the form of fixed or variable costs, and fail to provide adequate support for these claimed savings. Accordingly, we discount this claimed benefit.

VII. NATIONAL SECURITY, LAW ENFORCEMENT, FOREIGN POLICY, AND TRADE CONCERNS

61. When analyzing a transfer of control or assignment application or a petition for declaratory ruling that involves foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.[218] The Commission has

[212] *See* Narrative at 5-9; Viasat/Inmarsat Mar. 24, 2023 White Paper at 8 ("The transaction will improve Viasat's IFC offering and will enhance competition by ensuring that Viasat can continue to compete effectively—with a more attractive global IFC offering—against Intelsat, SpaceX, Panasonic and others.").

[213] *See, e.g.*, VIA-2R-004588620 at VIA-2R-004588622 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[214] *See* Viasat/Inmarsat Mar. 24, 2023 White Paper at 26-27 ("The combination of the Viasat and Inmarsat networks will enhance competition by accelerating Viasat's ability to offer customers global broadband coverage at a higher quality and lower cost. Improved and lower-cost offerings will allow Viasat to compete more effectively in an already crowded and growing field, with customers reaping the benefits.").

[215] Viasat Dec. 23, 2022 RFI Narrative Response at 14-15; Inmarsat Dec. 23, 2022 RFI Narrative Response at 13.

[216] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6.

[217] Viasat/Inmarsat Mar. 24, 2023 White Paper at 26.

[218] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider (continued….)

recognized its public interest analysis benefits from input by the Executive Branch agencies that have expertise in these issues. In particular, the Commission accords deference to Executive Branch agencies' unique expertise in identifying and interpreting issues of concern related to national security and law enforcement.[219] Accordingly, the Commission considers any concerns raised by Executive Branch agencies, but the Commission makes an independent decision on the applications and petitions based on the record in the proceeding.[220]

62. Pursuant to Commission practice, we referred the applications and Viasat Petition to the relevant Executive Branch agencies, including the Committee agencies, for their views on any national security, law enforcement, foreign policy, trade policy concerns related to the foreign ownership of the Applicants.[221] The Committee advised that it had no objection to the Commission's granting the applications and the Viasat Petition provided that the Commission conditions its approval on the assurances of Connect Topco and Viasat to abide by the commitments and undertakings set forth in the Letter of Agreement (LOA).[222]

63. In assessing the public interest, we take into account the record developed in each particular case and accord appropriate deference to the expertise of the Executive Branch agencies on national security and law enforcement, and other concerns related to foreign ownership of Commission licensees.[223] As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.[224] For the reasons set out herein, in accordance with the request of the Committee and in the absence of any objection from the Applicants, we grant the Committee Petition and condition grant of the applications and the Viasat Petition on compliance by Viasat and Connect Topco with the commitments and undertakings set forth in the LOA.[225] A failure to

national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act).

[219] *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272, 11277, para. 6 (2016) (*2016 Foreign Ownership Order*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017); *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 62.

[220] *Foreign Participation Order*, 12 RCC Rcd at 23921, para. 66; *see also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd 5741, 5762, para. 34 (2013) (*2013 Foreign Ownership Order*) ("While the Commission has exercised its discretion to rely substantially on the views of Executive Branch agencies for their expertise on matters of national security, law enforcement, foreign policy and trade policy in cases involving foreign investment in U.S. common carrier and aeronautical licensees, we do not believe it would be appropriate for us essentially to delegate this statutory responsibility to such agencies."). On June 6, 2022, the DOJ, on behalf of the Committee, requested that the Commission defer action on the Application until such time as the Committee has completed its review for any national security and law enforcement concerns that may be raised by foreign participation in the U.S. telecommunications sector. *See* DOJ, The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector – Frequently Asked Questions, https://www.justice.gov/nsd/committee-assessment-foreign-participation-united-states-telecommunications-services-sector (last visited May 11, 2023); Committee Deferral Letter.

[221] *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24; *Foreign Participation Order,* 12 FCC Rcd 23891, 23919, paras. 61-63.

[222] Committee Petition at 1-2; LOA.

[223] *T-Mobile-Sprint Order*, 34 FCC Rcd at 10734-35, para. 353; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6; *Foreign Participation Order*, 12 FCC Rcd at 23919, paras. 61-62.

[224] *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 62.

[225] Committee Petition; LOA.

comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and licenses, and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this grant and the authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

VIII. SECTION 310(B) FOREIGN OWNERSHIP REVIEW AND DECLARATORY RULING

A. Review of Foreign Ownership in the Controlling U.S. Parents of Common Carrier Wireless and Satellite Radio Earth Station Licensees

64. In connection with the proposed transaction, the Petitioner filed a petition pursuant to section 1.5000(a)(1) of the Commission's rules, to permit foreign ownership of IGHI, the controlling U.S. parent of Inmarsat Solutions and ISAT, to exceed the 25% benchmarks in section 310(b)(4) of the Act.[226] The Petitioner contends that grant of the proposed foreign ownership of Viasat, including IGHI, would serve the public interest.[227] Inmarsat Solutions and ISAT are licensees of common carrier earth stations and thus subject to section 310(b) of the Act.

65. The Viasat Petition explains that, upon consummation of the proposed transaction, foreign entities will hold approximately 45% of the voting and equity interests in Viasat.[228] According to the Viasat Petition, each of the Inmarsat Investors directly holds 25% of Connect Topco's voting interests, and in turn, Connect Topco owns 99.19% of Connect Sub-Topco Limited (Connect Sub-Topco), with the remaining 0.81% owned by a small number of Inmarsat senior management shareholders.[229] As a result of the proposed transaction, Connect Topco will become a direct, wholly owned subsidiary of Viasat, and Connect Sub-Topco, IGHI, and the Inmarsat Licensees, including Inmarsat Solutions and ISAT, will become indirect, wholly owned subsidiaries of Viasat.[230] The Viasat Petition states that after the proposed transaction, each of the Inmarsat Investors would continue to hold indirect interests in IGHI through Viasat, and the aggregate interest would be diluted from 100% to 37.5%.[231] According to the Viasat Petition, the remaining portion of the estimated 45% aggregate post-transaction foreign ownership is held by entities that are beneficial owners of common stock.[232]

66. Viasat seeks approval for indirect foreign entities and individuals in the aggregate to hold up to 100% of the equity and voting interests in IGHI, the controlling U.S. parent.[233] Pursuant to section 1.5001(i) of the Commission's rules,[234] the Petitioner seeks specific approval for the direct and/or indirect foreign equity and/or voting interests that would be held in IGHI upon completion of the proposed

[226] 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1); Viasat Petition at 2.

[227] Viasat Petition at 2.

[228] *Id.* at 10.

[229] *Id.* at 4. According to the Viasat Petition, "Inmarsat Investors have a contractual right to designate for nomination up to two out of ten directors to Viasat's board of directors; their right to designate directors for nomination is subject to their ownership percentage of the total outstanding shares of Viasat's common stock. Those parties also are contractually obligated to vote their shares in accordance with the recommendation of the Viasat board of directors or any applicable committee thereof with respect to any action, proposal or matter to be voted on by the Viasat stockholders for a specified period." *Id*. at 5, 11.

[230] *Id.* at 5.

[231] *Id.* at 8.

[232] Viasat Petition at 10.

[233] Updated Specific Approval and Advance Approval Supplement at 11; Updated Ownership Diagrams Supplement.

[234] 47 CFR §1.5001(i).

transaction by certain foreign-organized entities and foreign individuals at the percentages specified below:

Inmarsat Solutions Limited (100% equity and voting) (United Kingdom);

Inmarsat Finance III Limited (100% equity and voting) (United Kingdom);

Inmarsat New Ventures Limited (100% equity and voting) (United Kingdom);

Inmarsat Investments Limited (100% equity and voting) (United Kingdom);

Inmarsat Group Limited (100% equity and voting) (United Kingdom);

Inmarsat Holdings Limited (100% equity and voting) (United Kingdom);

Inmarsat Group Holdings Limited (100% equity and voting) (United Kingdom);

Connect Bidco Limited (100% equity and voting) (Guernsey);

Connect Midco Limited (100% equity and voting) (Guernsey);

Connect Sub-Topco Limited (100% equity and voting) (Guernsey); and

Connect Topco Limited (100% equity and voting) (Guernsey).

Triton LuxTopHolding SARL (<9.375% equity and <9.375% voting) (Luxembourg), and the following affiliated entities and individuals:

Triton Lux EquityCo SARL (<8.418% equity and <8.418% voting) (Luxembourg);

Apax IX USD L.P. (<6.197% equity and <8.418% voting) (Guernsey);

Apax IX USD Co-Investment L.P. (<0.055% equity and <8.418% voting) (Guernsey);

Apax IX EUR L.P. (<2.127% equity and <8.418% voting) (Guernsey);

Apax IX EUR Co-Investment L.P. (<0.039% equity and <8.418% voting) (Guernsey);

A9 USD (Feeder) L.P. (<2.784% equity and <2.784% voting) (Guernsey);

A9 USD Founder L.P(<0.01% equity and 0% voting) (Guernsey);

A9 EUR (Feeder) L.P. (<1.509% equity and <1.509% voting) (Guernsey);

A9 EUR Founder L.P. (<0.01% equity and 0% voting) (Guernsey);

Apax IX USD GP L.P., Inc. (<0.044% equity and <8.418% voting) (Guernsey);

Apax IX EUR GP L.P. Inc. (0% equity and <8.418% voting) (Guernsey);

Apax IX GP Co. Limited (<8.418% equity and <9.375% voting) (Guernsey);

Apax IX Founder GP Co. Limited (<0.01% equity and 0% voting) (Guernsey);

Apax Guernsey (Holdco) PCC Limited Apax IX Cell (0% equity and <9.375% voting) (Guernsey);

Connect Syndication L.P. (<0.957% equity and <0.957% voting) (Guernsey);

Connect Syndication GP Co. Limited (0% equity and <0.957% voting) (Guernsey);

The Hirzel IV Purpose Trust (0% equity and <9.375% voting) (Guernsey);

Andrew Guille (Trustee, 0% equity and <9.375% voting) (United Kingdom);

Jacqueline Ward (Trustee, 0% equity and <9.375% voting) (United Kingdom); and

Simon Cresswell (Trust Enforcer, 0% equity and 0% voting) (Australia).

CPP Investment Board Private Holdings (4) Inc. (<9.375% equity and <9.375% voting) (Canada), and the following affiliated entity:

Canada Pension Plan Investment Board (<9.375% equity and <9.375% voting) (Canada).

Ontario Teachers' Pension Plan Board (<9.375% equity and <9.375% voting) (Canada).

WP Triton Co-Invest, L.P. (<9.27% equity and <9.27% voting) (Cayman Islands), and the following affiliated entities:

Warburg Pincus (Callisto-A) Global Growth (Cayman), L.P. (<1.89% equity and <1.89% voting) (Cayman Islands);

Warburg Pincus (Europa) Global Growth (Cayman), L.P. (<1.92% equity and <1.92% voting) (Cayman Islands);

Warburg Pincus Global Growth-B (Cayman), L.P. (<1.39% equity and <1.39% voting) (Cayman Islands);

Warburg Pincus Global Growth-E (Cayman), L.P. (<1.19% equity and <1.19% voting) (Cayman Islands);

WP Global Growth Partners (Cayman), L.P. (<0.17% equity and <0.17% voting) (Cayman Islands);

Warburg Pincus Global Growth Partners (Cayman), L.P. (<0.47% equity and <0.47% voting) (Cayman Islands);

WP Triton Investment, L.P. (<2.24% equity and <2.24% voting) (Cayman Islands);

Warburg Pincus (Cayman) Global Growth GP, L.P. (0% equity and <9.27% voting) (Cayman Islands);

Warburg Pincus Partners II (Cayman), L.P. (0% equity and <9.27% voting) (Cayman Islands); and

Warburg Pincus (Bermuda) Private Equity GP, Ltd. (0% equity and <9.27% voting) (Bermuda).

67. Pursuant to section 1.5001(k) of the Commission's rules,[235] Viasat requests advance approval to permit Connect Topco and the foreign entities that directly and indirectly own IGHI, and the Inmarsat Investors and their owners and noncontrolling parties to increase their interests in IGHI up to and including a noncontrolling 49.99% equity and voting interest.[236]

68. We received no comments regarding foreign ownership. As noted above, NTIA, on behalf of the Committee, has advised the Commission that the Committee has no objection to the Commission approving the authority sought, provided that the Commission conditions its approval on the assurance of Viasat and Connect Topco to abide by the commitment and undertakings set forth in the LOA.[237]

B. Foreign Ownership Ruling.

69. Based on our review of the record, we find that the public interest would not be served by prohibiting the foreign ownership of IGHI, the controlling U.S. parent of Inmarsat Solutions and ISAT, in

[235] 47 CFR § 1.5001(k).

[236] *Id.*

[237] Committee Petition; LOA.

excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Viasat Petition subject to the conditions set out herein.

70. This ruling authorizes 100% aggregate foreign ownership of IGHI, the controlling U.S. parent of Inmarsat Solutions and ISAT, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.[238] In addition, pursuant to section 1.5001(i) of the Commission's rules, we approve the foreign equity and voting interests that would be held in IGHI by each of the above-listed foreign entities and individuals in the amounts specified above. We also approve the Petitioner's request for advance approval, pursuant to section 1.5001(k) of the Commission's rules, permitting Connect Topco and the foreign entities that directly and indirectly own IGHI, and the Inmarsat Investors and their owners and noncontrolling parties to increase their interests in IGHI up to and including a noncontrolling 49.99% equity and voting interest.

71. Under this ruling, Viasat and IGHI have an affirmative duty to monitor their foreign equity and voting interests, calculate these interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules,[239] and otherwise ensure continuing compliance with the provisions of section 310(b)(4) of the Act.[240] A failure to comply and/or remain in compliance with a condition of this authorization shall constitute grounds for declaring the ruling terminated without further action on the part of the Commission. A failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

IX. CONCLUSION

72. After carefully reviewing the record in this proceeding, we find that the proposed transaction will not violate the Act or the Commission's rules. We further find that it is unlikely to have adverse competitive effects in the market segments in which the Applicants compete. At the same time, we find that the proposed transaction will generate several public interest benefits, including giving the merged entity greater spectrum density and diversity and additional satellite capacity as well as enabling the merged entity to offer innovative services and improved service quality. Accordingly, we find that approval of this transaction will serve the public interest, convenience, and necessity.

X. ORDERING CLAUSES

73. **ACCORDINGLY**, having reviewed the applications, Viasat Petition, and the record in this matter, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), 5(c), 214(a), 214(c), 303(r), 309, and 310(d) of the Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), 214(a), 214(c), 303(r), 309, 310(d), and sections 25.119, 63.04, and 63.24 of the Commission's rules, 47 CFR §§ 25.119, 63.04, 63.24, and pursuant to the authority delegated under sections 0.261 and 0.351 of the Commission's rules, 47 CFR §§ 0.261 and 0.351, that the Applications to transfer control of the authorizations and licenses listed in Appendix A

[238] 47 CFR § 1.5004. A few of the terms and conditions set forth in section 1.5004 of the Commission's rules are as follows: (1) where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign organized entity; (2) a licensee that has received a foreign ownership ruling, including a U.S.-organized successor in-interest to such licensee as part of a pro forma reorganization, or any subsidiary or affiliate relying on such licensee's ruling, shall file a new petition for declaratory ruling under § 1.5000 to obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms of conditions of its rulings; and (3) if at any time the licensee, including any successor-in interest and any subsidiary or affiliate knows, or has reason to know, that it is no longer in compliance with its foreign ownership rulings or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance.

[239] *See* 47 CFR § 1.5002-1.5003.

[240] *See* 47 CFR § 1.5004, Note to paragraph (a).

ARE GRANTED, subject to the conditions specified in this Memorandum Opinion and Order and Declaratory Ruling.

74. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(b), and sections 1.5000-1.5004 of the Commission's rules, 47 CFR §§ 1.5000-1.5004, the Petition for Declaratory Ruling filed by Petitioner **IS GRANTED**, subject to the conditions specified in this Memorandum Opinion and Order and Declaratory Ruling.

75. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(b), and sections 1.5000-1.5004 of the Commission's rules, 47 CFR §§ 1.5000-1.5004, the Committee Petition to Adopt Conditions to Authorizations and Licenses filed by the NTIA **IS GRANTED**.

76. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), 214, 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303(r), 309, 310(b), 310(d), and sections 1.948, 63.03-63.04, 63.24 and 1.40001-1.40004 of the Commission's rules, 47 CFR §§ 1.948, 63.03-63.04, 63.24, 1.40001-1.40004, grant of the applications and Petition for Declaratory Ruling is **SUBJECT TO** compliance by Viasat and Connect Topco with the terms of the Letter of Agreement from Robert Blair, Senior Vice President, General Counsel and Secretary, Viasat, and Alison Horrocks, Secretary, Connect Topco, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense, dated February 15, 2023. A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. A failure to meet a condition of the grant may also result in monetary sanctions or other enforcement action by the Commission.

77. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), and sections 25.119 and 25.159(b) of the Commission's rules, 47 CFR §§ 25.119, 25.159(b), grant of the applications is **SUBJECT TO** Viasat and Inmarsat taking any actions necessary concurrent with consummation of the transaction to come into compliance with or obtain relief from the provisions of section 25.159(b) of the Commission's rules, 47 CFR § 25.159(b).

78. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order and Declaratory Ruling **SHALL BE EFFECTIVE** upon release, in accordance with section 1.102 of the Commission's rules, 47 CFR § 1.102. Petitions for reconsideration under section 1.106 of the Commission's Rules, 47 CFR § 1.106, may be filed within thirty days of the release date of this Memorandum Opinion and Order and Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief, Space Bureau

M. Ethan Lucarelli
Chief, Office of International Affairs

APPENDIX A

List of Applications

Part 25 – Earth Station Licenses

File Number	Licensee	Lead Call Sign
SES-T/C-20220201-00145	ISAT US Inc.	E090032
SES-T/C-20220201-00146	Inmarsat Inc.	E150028
SES-T/C-20220201-00147	Inmarsat Inc.	E080059
SES-T/C-20220201-00148	ISAT US Inc.	E140029
SES-T/C-20220201-00149	Inmarsat Solutions (US) Inc.	E000180

Part 63 – International Section 214 Authorizations

The application for consent to the transfer of control of international section 214 authorizations has been assigned the file number listed below.

File Number	Authorization Holder	Authorization Numbers
ITC-T/C-20220201-00026	Inmarsat Group Holdings Inc.	ITC-214-19980121-00028 ITC-214-20090501-00194

Petition for Declaratory Ruling under Section 310(b)(4)

The Petition has been assigned File No. ISP-PDR-20220131-00001.

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. 23-428

Report No. SAT-01727 **Friday May 19, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-STA-20230209-00029 E Space Exploration Holdings, LLC
Special Temporary Authority
Withdrawn Effective Date: 05/15/2023

SAT-STA-20230210-00033 E S2433 SES Americom, Inc.
Special Temporary Authority
Grant of Authority Effective Date: 05/16/2023

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

SAT-STA-20230313-00055 E S2844 EchoStar BSS Corporation
Special Temporary Authority
Grant of Authority Effective Date: 05/18/2023

On May 18, 2023, the Satellite Programs and Policy Division granted special temporary authority, for a period of 180 days, for EchoStar BSS Corporation to operate the EchoStar 16 satellite to provide Direct Broadcast Satellite Service over channels 1 and 2. EchoStar 16 is located at the 61.5° W.L. orbital location, and will use the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands.

SAT-STA-20230313-00056 E S2811 EchoStar BSS Corporation
Special Temporary Authority
Grant of Authority Effective Date: 05/18/2023

On May 18, 2023, the Satellite Programs and Policy Division granted special temporary authority, for a period of 180 days, for EchoStar BSS Corporation to operate the EchoStar 15 satellite to provide Direct Broadcast Satellite Service over channels 1 and 2. EchoStar 15 is located at the 61.65° W.L. orbital location, and will use the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands.

SAT-STA-20230404-00071 E Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 05/18/2023

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

SAT-STA-20230508-00106 E S2381 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 05/18/2023

On May 18, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority for an additional period of 30 days to Intelsat License LLC in order for Galaxy 3C to provide fixed-satellite service at the 94.85° W.L. orbital location using the 3700-4200 MHz, 11.45-12.2 GHz (space-to-Earth), and 5925-6425 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands. Galaxy 3C operates telemetry, tracking and command using the following center frequencies: 11702 MHz, 11703 MHz, 11704 MHz, and 12199 MHz (space-to-Earth), 13753 MHz and 14001 MHz (Earth-to-space).

SAT-STA-20230516-00110 E Iridium Constellation LLC
Special Temporary Authority
Grant of Authority Effective Date: 05/18/2023

On May 18, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Iridium Constellation LLC for a period of up to 30 days to deploy and maintain five new in-orbit spare satellites at orbital locations different from those originally authorized. Specifically, Iridium is authorized to maintain the spare satellites at altitudes between 615 km and 760 km, instead of the 700-750 km storage altitude range.

SAT-STA-20230517-00113 E Intelsat License LLC
Special Temporary Authority
Withdrawn Effective Date: 05/18/2023

INFORMATIVE

SAT-MOD-20170823-00121 S2134 SES Americom, Inc.

SES Americom Inc. previously notified the Commission that it had placed its AMC-2 spacecraft, call sign S2134, IBFS File No. SAT-MOD-20170823-00121, into a disposal orbit. See Letter from Petra Vorwig, Vice President, Legal & Regulatory Affairs, SES Americom Inc., to Marlene H. Dortch, Secretary, FCC, dated December 14, 2020. AMC-2 operated at the 84.85° W.L. orbital location using the 3700-4200 MHz (space-to-Earth), 5925-6425 MHz (Earth-to-space), 11.7-12.2 GHz (space-to-Earth), and 14.0-14.5 GHz (Earth-to-space) frequency bands. SES is not operating, nor has it indicated any intent to operate, another spacecraft that uses these frequency bands at the 84.85° W.L. orbital location. These frequency bands at the 84.85° W.L. orbital location are now available for reassignment pursuant to the Commission's first-come, first-served licensing process, effective 2:00 p.m. EDT on Tuesday, May 23, 2023. At that time, interested parties may file applications for new space stations, requests for market access by non-U.S. licensed space stations, modifications to licensed space stations, or amendments to pending applications taking this announcement into account. Applications filed prior to this date and time will be dismissed as premature, without prejudice to re-filing.

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-429
Released: May 22, 2023

APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF MINT MOBILE, LLC AND UVNV, INC. (D/B/A ULTRA MOBILE) TO T-MOBILE US, INC.

PLEADING CYCLE ESTABLISHED

GN Docket No. 23-171

Comments Due: June 21, 2023
Reply Comments Due: July 6, 2023

By this Public Notice, the Commission seeks comment from interested parties on applications filed pursuant to section 214 of the Communications Act of 1934, as amended (Act)[1] and sections 63.18 and 63.24 of the Commission's rules,[2] to transfer control of Mint Mobile, LLC (Mint Mobile) and UVNV, Inc. (UVNV) from Ka'ena Corporation (Ka'ena) to T-Mobile US, Inc. (T-Mobile US).[3]

UVNV, which operates the Ultra Mobile brand, and Mint Mobile are both non-facilities-based mobile virtual network operators (MVNOs) and hold international section 214 authorizations.[4] According to the Applicants, both Mint Mobile and Ultra Mobile operate exclusively on the T- Mobile network.[5] UVNV is a wholly owned subsidiary of Ka'ena and Ka'ena holds a majority (53%) and controlling interest in Mint Mobile.[6]

Pursuant to a March 9, 2023 Merger and Unit Purchase Agreement, T-Mobile USA will acquire 100% of the interest Ka'ena holds in both Mint Mobile and UVNV. T-Mobile USA will acquire the remaining membership interests in Mint Mobile from the minority owners.[7] Upon consummation, Mint Mobile and UVNV will both be wholly owned indirect subsidiaries of T-Mobile US. UVNV will be a

[1] 47 U.S.C. § 214.

[2] 47 CFR §§ 63.18, 63.24.

[3] ICFS File Nos. ITC-T/C-20230406-00043 (Mint Mobile Application) and ITC-T/C-20230406-00044 (UVNV Application) (together, Applications). On May 1, 2023, the Applicants filed supplemental ownership information. Letter from Nancy Victory, DLA Piper, to Marlene H. Dortch, FCC, ICFS File No. ITC-T/C-20230406-00043 (dated May 1 2023) (Mint Mobile Supplement); Letter from Nancy Victory, DLA Piper, to Marlene H. Dortch, FCC, ICFS File No. ITC-T/C-20230406-00044 (dated May 1 2023) (UVNV Supplement).

[4] ICFS File Nos. ITC-214-20191101-00176 (Mint Mobile Authorization) and ITC-214-20141103-00290 (UVNV Authorization).

[5] Mint Mobile Application at 5-6; UVNV Application at 5-6.

[6] Mint Mobile Application at 2, 14; UVNV Application at 2, 14.

[7] Mint Mobile Application at 5-6; UVNV Application at 5-6.

wholly owned subsidiary of New Ka'ena, Inc. (New Ka'ena), which in turn will be a wholly owned subsidiary of T-Mobile US, all U.S. entities.[8] New Ka'ena will have a 53.6% interest in Mint Mobile. T-Mobile USA, Inc. (T-Mobile USA), a wholly owned subsidiary of T-Mobile US, will hold the other 46.4% interest in Mint Mobile, 26.4% directly and 20% indirectly through Mint Mobile Incentive Company, LLC, which will be a wholly owned subsidiary of T-Mobile USA, all U.S. entities.[9]

Deutsche Telekom AG (DT), a German corporation, has a combined 50.22% interest in T-Mobile US: 5.52% directly in T-Mobile US and 44.70% indirectly through Deutsche Telekom Holding B.V., an indirect wholly owned subsidiary of DT.[10] In addition, DT holds *de facto* control of T-Mobile US as a result of proxy agreements which authorize DT to vote the majority of the stock of T-Mobile US.[11] Kreditanstalt fur Wiederaufbau (KfW), a bank controlled by the German government, has a 16.63% direct ownership interest in DT. The Federal Republic of Germany (FRG) has an 80% ownership interest in KfW and a direct 13.83% ownership interest in DT. Thus, FRG has an approximate 27.13% attributable equity interest and an approximate 30.46% attributable voting interest in DT. [12]

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.[13] The Applicants state that the Applications should be exempt from referral for Executive Branch review because T-Mobile US: (1) is subject to an agreement with an Executive Branch agency concerning national security and/or law enforcement, (2) there are no new reportable foreign owners of T-Mobile US since the effective date of that agreement, and (3) T-Mobile US agrees to continue to comply with the terms of that agreement.[14] We find that the Applications come within an exclusion from referral and thus we are exercising our discretion and are not referring the Applications to the Executive Branch.[15] While we are not formally referring the Applications, we will provide a courtesy copy of this Public Notice to the Executive Branch agencies.[16]

Filing Requirements. Interested parties may file comments on or before June 21, 2023 and reply comments by July 6, 2023.[17] All filings must refer to GN Docket No. 23-171.

Electronic Filers: Pleadings may be filed electronically using the Internet by accessing ECFS: http://apps.fcc.gov/ecfs/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding,

[8] UVNV Supplement at 1.

[9] Mint Mobile Supplement at 1-2.

[10] Mint Mobile Application at 3; UVNV Application at 3.

[11] Mint Mobile Application at 3; UVNV Application at 3.

[12] Mint Mobile Application at 3-4; UVNV Application at 3-4.

[13] *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, 10938-42, paras. 29-39 (2020) (*Executive Branch Review Process Order*).

[14] Mint Mobile Application at 3; UVNV Application at 3 (*citing Applications of T-Mobile US, Inc. and Sprint Corporation for Transfer of Control of Licenses and Authorizations, et al*., Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10734-35 at paras. 353-54) (2019)).

[15] *Executive Branch Review Process Order,* 35 FCC Rcd at 10941, 10957-58, para. 36, n.99; para 81, n.205.

[16] *Id.* at 10939, para 30, n.81.

[17] *See* 47 CFR §§ 1.2, 1.405, and 1.419.

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.[18]

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).

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[19] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).[20] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

One copy of each *ex parte* submission also must be delivered electronically, by email, or if delivered as paper copy, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Stacy Ferraro, Competition & Infrastructure Policy Division, Wireless Telecommunications Bureau, at stacy.ferraro@fcc.gov; (2) Judith Dempsey, Economic Analysis Division, Office of Economics and Analytics, at judith.dempsey@fcc.gov; (3) Karen Johnson, Telecommunications and Analysis Division, Office of International Affairs, at karen.johnson@fcc.gov; and (4) Joel Rabinovitz, Office of General Counsel, at joel.rabinovitz@fcc.gov.

-FCC-

[18] *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.

[19] 47 CFR §§ 1.1200 *et seq.*

[20] *Id.* § 1.1206(b).

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

In the Matter of	)	
	)	
The Rural Digital Opportunity Fund Auction	)	
(Auction 904)	)	AU Docket No. 20-34
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
	)	

ORDER ON RECONSIDERATION

Adopted: May 23, 2023 **Released: May 23, 2023**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau), in conjunction with the Office of Economics and Analytics (OEA), denies a petition for reconsideration submitted by Etheric Communications LLC[1] (Etheric) of the Bureau's decision to dismiss as moot and alternatively deny Etheric's request for waiver of the eligible telecommunications carrier (ETC) designation documentation deadline.[2] We affirm the Bureau's decision.

I. BACKGROUND

2. In the *Rural Digital Opportunity Fund Order*, the Commission determined that long-form applicants were required to obtain ETC designations covering each of the geographic areas for which they sought to be authorized for support and established a deadline of June 7, 2021 for submitting the relevant documentation.[3] The Commission recognized that, in some cases, applicants may face delays in obtaining their ETC designations and explained that a long-form applicant could seek waiver of the ETC deadline if it anticipated that it would not be able to obtain the required designations within 180 days.[4] Additionally, the Commission noted that it would presume that a long-form applicant acted in good faith if it filed its ETC application with the relevant state authority within 30 days of the release of the public notice identifying Rural Digital Opportunity Fund auction (RDOF or Auction 904) winning bidders.[5]

[1] *See* Etheric Communications LLC, Petition for Reconsideration, AU Docket No. 20-34 et al. (filed Feb. 13, 2023) (Etheric Petition for Reconsideration).

[2] *Rural Digital Opportunity Fund Support Authorized for 1,764 Winning Bids; Etheric Communications LLC's Petition for Waiver of the June 7, 2021 Eligible Telecommunications Carrier Documentation Deadline Denied,* AU Docket No. 20-34 et al., Public Notice, DA 23-33 at 1-2 & n.1 (WCB Jan. 13, 2023) (*Etheric Dismissal and Denial Public Notice*).

[3] *Connect America Fund*, Report and Order, WC Docket No. 19-126 et al., 35 FCC Rcd 686, 727-28, para. 92. (2020) (*Rural Digital Opportunity Fund Order*); *see also Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced, FCC Form 683 Due January 29, 2021*, Public Notice, 35 FCC Rcd 13888, 13894, para. 17 (2020) (*Auction 904 Closing PN).*

[4] *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 723, para. 81 n.230.

[5] *Id.* at 723, para. 81. As this public notice was released on December 7, 2020, applicants had until January 6, 2021 to avail themselves of this "good faith" presumption. *See Auction 904 Closing PN.*

3. *ETC Waiver Dismissal and Denial.* Etheric sought relief of the deadline for providing documentation of its ETC designation in the state of California after filing its ETC designation petition with the California Public Utilities Commission (CPUC) on January 5, 2021, within the 30-day "good faith presumption" window.[6] On December 16, 2022, the CPUC issued a decision denying Etheric's request for an ETC designation covering its Auction 904 winning bids in the state.[7] Etheric then notified the Commission that it was "considering its options to respond to the CPUC Decision and further proceedings to obtain ETC status in California" and urged the Commission "to defer final action on its pending long form application until any further proceeding it pursues to obtain ETC status for California have been completed."[8] Because the CPUC had denied Etheric's petition for ETC designation, the Bureau dismissed Etheric's petition for waiver as moot on January 13, 2023.[9] Alternatively, the Bureau also denied Etheric's petition for waiver on the merits, finding "that it would not serve the public interest to delay action on Etheric's Rural Digital Opportunity Fund application indefinitely after the CPUC has already denied Etheric's ETC petition and while Etheric considers its options for moving forward."[10]

4. *Request for Reconsideration*. Etheric submitted a petition for reconsideration of the Bureau's dismissal and/or denial of its waiver request.[11] Etheric argues that the Bureau "acted prematurely" on Etheric's request for waiver because it had "not exhausted California administrative remedies to reverse" the CPUC's denial.[12] Etheric also claims the Bureau erred by "fail[ing] to assess the CPUC Order denying Etheric ETC status on its legal merits," and asserts that the CPUC's denial is "highly vulnerable to reversal upon further review."[13] Additionally, Etheric argues that the CPUC, in denying the ETC petition, "establish[ed] their own unique eligibility and compliance criteria for universal service funding," and that "the Commission's rules provide no authority for a state agency unilaterally to preclude a provisional support recipient's performance of its RDOF obligations based on *sui generis* review of the financial criteria set out in the [Federal Communications Commission's] rules."[14] Finally,

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[6] Application of Etheric Communications, LLC for a Certificate of Convenience and Necessity to Provide Full Facilities-Based and Resold Competitive Local Exchange and Non-Dominant Interexchange Service and Designation as an Eligible Telecommunications Carrier in California, Application 21-01-002 (filed Jan. 5, 2021); Etheric Communications, LLC Petition for Waiver of Section 54.804(b)(3) of the Commission's Rules, AU Docket No. 20-34 et al., at 3 (filed May 12, 2021) (Etheric ETC Waiver Petition). We note that despite Etheric's reference to section 54.804(b)(3) of the Commission's rules (letter of credit commitment letter) in its request, Etheric acknowledged in its Petition for Reconsideration that the caption should be corrected to seek waiver of section 54.804(b)(5) regarding the ETC designation deadline. Etheric Petition for Reconsideration at 1.n.4.

[7] California Public Utilities Commission, Application of Etheric Communications, LLC for a Certificate of Public Convenience and Necessity to Provide Full Facilities-Based and Resold Competitive Local Exchange and Non-Dominant Interexchange Service and Designation as an Eligible Telecommunications Carrier in California, Application 21-01-002, Decision Granting Etheric a Certificate of Public Convenience and Necessity in Order to Provide Full Facilities-Based and Resold Competitive Local Exchange Services and Resold Interexchange Services but Denying Designation as an Eligible Telecommunications Carrier, Decision 22-12-026 (Dec. 15, 2022) (*CPUC Denial Order*).

[8] *See* Letter from Stephen E. Coran, Counsel to Etheric Communications LLC, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34 et al. (filed Dec. 21, 2022) (Etheric Dec. 21, 2022 *Ex Parte*).

[9] *Etheric Dismissal and Denial Public Notice* at 1 n.1.

[10] *Id.* at 1-2 n.1 (explaining that "[b]y denying Etheric's petition, [the Bureau] open[s] the relevant areas covered by Etheric's Auction 904 winning bids up to eligibility for future funding programs to the extent they remain unserved, rather than tying up these areas for an indefinite period of time with no indication that Etheric will ultimately obtain an ETC designation from California").

[11] *See generally* Etheric Petition for Reconsideration.

[12] *Id.* at 3.

[13] *Id.* at 4-8.

[14] *Id.* at 8-9.

Etheric claims that "the resolution of Etheric's California ETC application provides a faster path for unserved areas" to become served than waiting for future funding programs, and that "a final decision on the pending RDOF application can be rendered well in advance of any need to finalize eligibility for such future support programs."[15]

II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.[16] Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.[17] Further, the Commission may reconsider the record and change its decision if the facts in the record demonstrate a waiver is warranted and in the public interest.[18] However, a petition for reconsideration that relies on facts or arguments not previously presented may only be granted in certain circumstances.[19] As explained below, upon reconsideration, we affirm our previous decision and deny the petition for reconsideration filed by Etheric.

6. We reject Etheric's claim that the Bureau erroneously concluded that Etheric has been "unable" to obtain its ETC designation and should have waited until Etheric exhausted its administrative remedies prior to acting on Etheric's petition for waiver.[20] The Communications Act of 1934, as amended, gives state commissions the primary responsibility for granting ETC designation to companies operating in their states.[21] As Etheric notes, "Congress intended that state regulators could 'evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity,'" consistent with federal and other state law.[22] After lengthy and apparently thorough consideration, including several supplemental requests to and responses from Etheric, the CPUC on December 16, 2022, issued a decision denying Etheric's petition to obtain an ETC designation.[23] While Etheric has sought rehearing, the CPUC's decision is final and has not been stayed by the CPUC or a court.[24] The Bureau is required to heed the CPUC's decision and thus reasonably determined that Etheric is unable to obtain an ETC designation, and therefore Etheric's waiver petition is moot.

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[15] *Id.* at 9-10.

[16] 47 CFR § 1.3.

[17] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

[18] *See* 47 CFR § 1.106(c)(2).

[19] 47 CFR § 1.106 (b)(2), (c) (these include that "[t]he petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;" "[t] he petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity;" or "[t]he Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest").

[20] Etheric Petition for Reconsideration at 3.

[21] 47 U.S.C. § 214(e).

[22] Etheric Petition for Reconsideration at 5 (quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6397-98, para. 61 (2005) (citation omitted)).

[23] CPUC Denial Order at 2-4, 20-28, 30.

[24] *See* 20 Cal. Code. Regs. § 16.1(b) ("Filing of an application for rehearing shall not excuse compliance with an order or a decision."). The decision of the CPUC was effective upon release. CPUC Denial Order at 42.

7. We also are not persuaded that we should have assessed the legal merits of the CPUC's decision to deny Etheric's designation before dismissing and/or denying Etheric's waiver petition.[25] The Commission lacks jurisdiction to review a state's decision to grant or deny an ETC application.[26] Further, we note that the Fifth Circuit in *Texas Office of Public Utility Counsel v. FCC* held that nothing in section 214(e)(2) prohibits states from imposing their own eligibility requirements on carriers seeking ETC designations.[27] Thus, it appears that the CPUC is within its authority to consider, with respect to applications for ETC designations to receive RDOF support, "the local circumstances particular to each application," including "the ability of each applicant to carry out the RDOF build with its existing financial, technical, and operational expertise," consistent with the Commission's RDOF rules.[28] While the state's authority over ETC designations effectively may act "as a barrier to [the Commission's] own decisionmaking"[29] where states determine, consistent with the Commission's rules, that granting an application for ETC designation may not be in the public interest, this cooperative federalism was intended by Congress.[30]

8. Finally, we uphold the Bureau's determination that Etheric's waiver petition should be denied on the alternative and independent grounds that it would not serve the public interest to delay action on Etheric's long-form application indefinitely while Etheric considered and pursued an appeal of the CPUC's decision.[31] At the federal level alone, there are a number of programs that currently or soon

[25] Etheric Petition for Reconsideration at 4-9. As a threshold matter, these are new arguments that were not raised on the record prior to the Bureau making its decision, which precludes us from granting the petition on these grounds absent the circumstances specified in section 1.106 of the Commission's rules. 47 CFR § 1.106(c). Although Etheric notified the Commission it was pursuing its options "to respond" to the CPUC's decision, Etheric did not supplement its petition for waiver, nor did it raise the arguments on the record about the claimed deficiencies in the CPUC's decision that Etheric now makes in its petition for reconsideration. Etheric Dec. 21, 2022 *Ex Parte* at 1. Etheric does not claim that these arguments "relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission" or that these arguments were "unknown" to Etheric "until after [its] last opportunity to present them to the Commission". 47 CFR § 1.106(b)(2), (c)(1). Because the Bureau released its decision almost a month after the CPUC denied Etheric's ETC petition, Etheric had ample time to supplement its waiver petition to include such arguments. *See Etheric Dismissal and Denial Public Notice,* at 1-2 & n.1; *CPUC Denial Order*. And for the reasons described herein, we are not persuaded that it would serve the public interest to consider these arguments. 47 CFR § 1.106(c)(2).

[26] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6374, 6379, paras. 8, 19 (2005) (explaining that the Commission "encourage[d]" rather than required state commissions to adopt the same conditions and analysis that the Commission adopted for its own ETC designation process, while also noting that "[s]ection 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations."). Of course, the Commission may preempt a state decision that unlawfully trenches on FCC authority. But Etheric has not requested preemption, and in any event preemption is not warranted here, where (as explained below) the CPUC acted within its authority consistent with section 214(e) and the Fifth Circuit's holding in *Texas Office of Public Utility Counsel et al. v. Federal Communications Commission*, 183 F.3d 393, 418 (5th Cir. 1999).

[27] *Texas Office of Public Utility Counsel et al.*, 183 F.3d at 418.

[28] CPUC Denial Order at 28.

[29] Etheric Petition for Reconsideration at 8-9.

[30] *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92 (adopting the same ETC requirements for RDOF that the Commission adopted for the Connect America Fund Phase II auction and stating "[w]e recognize the statutory role that Congress created for state commissions and the FCC with respect to ETC designations, and we do not disturb that framework").

[31] Absent further action by the CPUC, Etheric may assume the CPUC has denied its application for rehearing within 60 days of filing and challenge the CPUC's decision in court. Cal. Pub. Util. Code §§ 1733, 1756.

will offer broadband funding for service providers.[32] The Commission must coordinate its broadband funding programs with those administered by other federal agencies to prevent or limit overlap and duplication among the various programs in order to maximize the efficient use of such funds.[33] If the status of the areas covered by Etheric's winning bids remains pending, other funding programs may not provide support in these areas, potentially leaving the consumers stranded in these areas without service if Etheric is not ultimately authorized for RDOF support. The Bureau's decision made clear that no RDOF support will be spent in the areas covered by Etheric's winning bids and, in doing so, reduces the risk that funding will be used inefficiently. Etheric provides no support for its claims that "a final decision on the pending RDOF application can be rendered well in advance of any need to finalize eligibility for . . . future support programs," and that the areas covered by its winning bids would be served "faster" if Etheric is able to exhaust its administrative remedies in California than if the areas became eligible for a different funding program.[34] We are not persuaded by these speculative assertions.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, 254, 405, and sections 0.91, 0.271, 0.291, 1.106 and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.271, 0.291, 1.106, 1.3, that this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that the petition for reconsideration of the deadline for providing documentation of ETC designation for Auction 904 filed by Etheric Communications LLC IS DENIED as described herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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[32] *See, e.g.*, United States Department of Agriculture, ReConnect Loan and Grant Program, https://www.usda.gov/reconnect (last visited May 23, 2023); National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment Program, Notice of Funding Opportunity, https://broadbandusa.ntia.doc.gov/broadband-equity-access-and-deployment-bead-program (last visited May 23, 2023) (BEAD NOFO); U.S. Department of the Treasury, Capital Projects Fund, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund (last visited May 23, 2023); Department of Treasury, Coronavirus State and Local Fiscal Recovery Funds, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds (last visited May 23, 2023).

[33] *See* Press Release, FCC et al., FCC, NTIA, USDA and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband Funding (May 12, 2022), https://www.fcc.gov/document/fcc-ntia-usda-treasury-announce-broadband-info-sharing-agreement.

[34] Etheric Petition for Reconsideration at 9-10.

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 23-431
Released: May 22, 2023

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

WC Docket No. 22-330

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by CSC Voice, LLC (CSC Voice), pursuant to section 52.15(g)(3) of the Commission's rules, seeking authorization to obtain North American Numbering Plan telephone numbers directly from the Numbering Administrator.[1]

On March 15, 2023, the Bureau released a public notice accepting CSC Voice's application for filing on a non-streamlined basis, finding that further analysis was required to determine whether granting the Application would serve the public interest.[2] The Bureau additionally sought comment on the Application.[3] No party filed comments in opposition to the Application. As the Bureau previously determined that CSC's application met the access-to-numbers application requirements set forth in section 52.15(g)(3)(i) of the Commission's rules,[4] and upon further consideration of the record, the Bureau finds that granting the Application will serve the public interest.[5]

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[1] CSC Voice, LLC, is an interconnected Voice over Internet Protocol (VoIP) provider and wholly owned subsidiary of Altice USA, Inc., that plans to begin offering interconnected VoIP service. *See* Application of CSC Voice for Authorization to Obtain Numbering Resources, WC Docket No. 22-330 (filed June 9, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10609406405729; 47 CFR § 52.15(g)(3).

[2] *Interconnected VoIP Numbering Authorization Application Filed by CSC Voice, LLC Pursuant to Section 52.15(g) of the Commission's Rules*, WC Docket No. 22-330, Public Notice, DA 23-220 (WCB 2023) (*CSC Voice Numbering PN*); *see* 47 CFR § 52.15(g)(3)(iii)(D).

[3] *CSC Voice Numbering PN* at 2.

[4] *Id.*

[5] CSC Voice disclosed that it has 10% or greater foreign ownership. *See* Supplement to CSC Voice, LLC's Application for Authorization to Obtain Numbering Resources, WC Docket No. 22-330, at 3-5 (filed Aug. 28, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10827203121157; Supplement to CSC Voice Application, WC Docket No. 22-330, at 2 (filed Dec. 5, 2022), https://www.fcc.gov/ecfs/document/120540316456/1 (describing Israeli and Luxembourger foreign ownership of Applicant via the indirect ownership interests of several entities and an individual, Patrick Drahi, and stating that Altice is subject to a national security agreement with the Executive Branch addressing national security and law enforcement concerns "with which CSC Voice will continue to comply if the [A]pplication is granted."). The Commission, in its discretion, did not refer the Application to the Executive Branch, but provided a courtesy copy of the public notice to the Executive Branch agencies. *See CSC Voice Numbering PN* at 2 (citing 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) (setting out which types of applications will generally be referred to the

(continued….)

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Mason Shefa, Competition Policy Division, Wireline Competition Bureau at mason.shefa@fcc.gov or (202) 418-2494.

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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); *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)).

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 23-432
Released: May 23, 2023

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES THE ACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR COMMUNICATIONS IMPACTED BY SUPER TYPHOON MAWAR 2023

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission), in coordination with the Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, has announced the activation of the Disaster Information Reporting System (DIRS) in response to communications impacted by Super Typhoon Mawar in Guam and the Commonwealth of the Northern Mariana Islands (CNMI). DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable, and Voice over Internet Protocol providers, and satellite providers can use to report communications infrastructure status and situational awareness information during times of crisis.

The Commission requests that communications providers that provide service to any areas listed below expeditiously submit and update information through DIRS regarding, *inter alia*, the status of their communications equipment, restoration efforts, and power (*i.e.*, whether they are using commercial power or back-up power). Communications providers can accomplish this by accessing DIRS at https://www.fcc.gov/nors/disaster/. Providers that have not previously done so will be asked to first provide contact information and obtain a User ID when they access DIRS. There is a link on the login page that will allow them to obtain the User ID and password. If a user does not remember their password, they should use the forgotten password link on the login page. If any user has any problems accessing DIRS, please contact any of the numbers listed below.

In DIRS, this activation will have the following name: SUPER TYPHOON MAWAR 2023. Communications providers are reminded that for providers that participate in DIRS, the separate Network Outage Reporting System (NORS) obligations are suspended for the duration of the DIRS activation with respect to outages where DIRS has been activated. **Reports are requested before 10:00 p.m., local time (Guam/CNMI) / 8:00a.m. (EDT) on Wednesday, May 24 and every day after that until DIRS is deactivated.**

Communications providers that serve an area listed below and that have already provided contact information in DIRS will be sent an e-mail requesting that they provide the above-referenced status information through DIRS. For any communications providers that have not already logged onto DIRS to input their contact information, the Commission encourages them to do so as soon as possible.

AREAS OF INTEREST FOR THIS ACTIVATION INCLUDE THE FOLLOWING U.S. TERRITORIES:

Guam
Commonwealth of the Northern Mariana Islands

The FCC continues to monitor this event and may amend the DIRS activation area in the coming days.

For further information, please contact:

Michael Caiafa at (202) 277-5189 (cell), (202) 418-1311, michael.caiafa@fcc.gov
David Ahn at (571) 232-8487 (cell), (202) 418-0853, david.ahn@fcc.gov
FCC 24/7 Operations Center at 202-418-1122, FCCOPS@fcc.gov

For more information on the FCC's response to Super Typhoon Mawar 2023, please go to https://www.fcc.gov/Mawar

- 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 23-433
Released: May 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 Because FCC Form 471 Application Filed Timely[3]

Cheder Chabad Inc., MD, Application No. 231032919, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2023)

[1] *See Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014). Sections 54.719(b) and 54.1718(a)(1) of the Commission's rules provide that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Sections 54.719(c) and 54.1718(a)(3) of the Commission's rules provide that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR §§ 54.719(b)-(c); 54.1718(a)(1)-(2). In this Public Notice, we have reclassified as Requests for Waiver any appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules. Similarly, we have reclassified as Requests for Review any appeals seeking a waiver of the Commission's rules but that are, in fact, seeking review of a USAC decision.

[2] *See* 47 CFR §§ 1.106(f), 1.115(d); *see also* 47 CFR § 1.4(b)(2) (setting forth the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission).

[3] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 7 (2010) (*Academy of Math and Science Order*) (finding that petitioners timely filed their FCC Forms 471 within the relevant FCC Form 471 application filing window).

Dismiss Due to Lack of Adverse Decision[4]

Aspira, Inc of Pennsylvania, PA, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Hernando County Schools, FL, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2023)

Highlander Charter School, RI, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Saint Thomas the Apostle School, NJ, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

St. Rose School, IL, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Dismissed for Failure to Comply with the Commission's Basic Filing Requirements[5]

Salesian High School, NY, No Application Number Given, CC Docket No. 02-6 (filed Apr. 17, 2023)

Dismissed on Reconsideration[6]

South Holland School District 151, IL, Application No. 181041035, Petition for Reconsideration, CC Docket No. 02-6 (filed Sept. 29, 2021)

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[4] *See, e.g.*, *Requests for Review of the Decision of the Universal Service Administrator by Danbury Public Schools; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-21*; Order, 17 FCC Rcd 17380, para. 2 (WCB 2002) (dismissing an appeal where no adverse USAC decision had yet been issued).

Petitioners should refile a waiver request with the Commission when they receive an adverse decision regarding their late-filed E-Rate program applications from USAC.

[5] 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by USAC, including the requirement that the request for review include supporting documentation); *see also Wireline Competition Bureau Reminds Parties of Requirements for Request for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 11-42, 13-184, 14-58, Public Notice, 29 FCC Rcd 13874 (WCB 2014) (*Appeal Filing Requirements Reminder Public Notice*) (reminding parties submitting appeals to the Bureau of the general filing requirements contained in the Commission's rules which, along with a proper caption and reference to the applicable docket number, require: (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Commission rule, order or statutory provision; and (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought); *Universal Service Contribution Methodology*; *Request for Review by Alternative Phone, Inc. and Request for Waiver*, WC Docket No. 06-122, Order, 26 FCC Rcd 6079 (WCB 2011) (*Alternative Phone, Inc. Order*) (dismissing without prejudice a request for review that failed to meet the requirements of section 54.721 of the Commission's rules).

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

Dismissed on Reconsideration – Untimely[7]

Bais Chaya Mushka, NY, Application No. 191002705, Petition for Reconsideration, CC Docket No. 02-6 (filed May 1, 2023)

Choanoke Area Development Association, Inc., NC, Application No. 191040624, Petition for Reconsideration, CC Docket No. 02-6 (filed Apr. 27, 2021)

Dismiss to Allow Appeal to be Filed with USAC[8]

Northland Telephone Systems, Ltd. (House of Good Shepard School), NY, Application No. 211031952, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Granted[9]

Eligible Entities[10]

Perseus House, PA, Application No. 221034763, Request for Waiver, CC Docket No. 02-6 (filed Dec. 21, 2022, supplemented Apr. 24, 2023)

[7] *See, e.g.*, *Petitions for Reconsideration by Rockwood School District and Yakutat School District*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 13004, 13004, para. 2 (WCB 2011) (dismissing petitions for reconsideration because they were filed more than 30 days after the date of the Bureau's decisions).

[8] *See Petitions for Reconsideration by Little Falls Township School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, DA 23-110, para. 10 (WCB Feb. 8, 2023) (*Little Falls Township Order*) (dismissing without prejudice appeals that are filed with the Commission before being reviewed at USAC and waiving the 60-day appeal filing deadline to allow the party to refile its appeal at USAC and have it considered on the merits).

Parties seeking review of USAC decisions must first file an appeal with USAC. *See* 47 CFR § 54.719(a). Because the petitioners filed their appeal with the Commission first, we now provide them 60 days from the release date of this Public Notice to refile their appeal at USAC. Pursuant to the *Little Falls Township Order*, we also waive the 60-day appeal filing deadline, 47 CFR § 54.720(a), to allow the appeal to be considered on the merits by USAC without being considered late. *See Little Falls Township Order* at para. 10. Appeals for funding year 2016 and forward should be filed in the E-Rate Productivity Center portal, found here: EPC. Appeals from funding year 2015 and prior funding years should be filed by email to Appeals@usac.org.

[9] 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).

[10] *See, e.g.*, *Requests for Review of the Decisions of the Universal Service Administrator by Bootheel Consortium, et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8747, 8750-51, paras. 7-8 (2007) (directing USAC to reevaluate the entity's eligibility for E-Rate support based on the additional supporting evidence that applicants have provided).

Invoice Deadline Extension[11]

Sanger Unified School District, CA, Application No. 201030212, Request for Waiver, CC Docket No. 02-6 (filed July 28, 2022)

Invoice Timely Filed[12]

South Whittier Elementary School District, MO, Application No. 201016943, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Late-Filed FCC Form 471 Applications – Due to Circumstances Beyond Their Control[13]

Atlantic Community Charter School, NJ, Application No. 231039292, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

It Takes A Village (ITAV), IL, Application Nos. 231039430, 231039494, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2023)

Kingdom Life Preparatory Academy, FL, Application No. 231021556, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

War Horse Christian School, IL, Application No. 231039348, 231039350, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

Worcester Cultural Academy Charter School, MA, Application Nos. 231039446, 231039447, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Late-Filed FCC Form 471 Applications – Filed Within 14 Days of the Close of the Window[14]

Academir Charter School East, FL, Application No. 231038702, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

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[11] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 18-188 (WCB Feb. 26, 2018) 2018, 33 FCC Rcd 2042 (granting a limited waiver of the Commission's invoicing rules to allow certain E-Rate program applicants and service providers to submit invoices beyond the 120-day extension already received and allowed by the Commission's rules).

[12] Consistent with our obligation to conduct a de novo review of appeals of decisions made by USAC, we grant these requests for review. *See* 47 CFR § 54.723. We find that the applicant timely filed an invoice for the services at issue. Because the invoices were submitted before the respective invoice filing deadline, USAC should accept the submitted invoice or the applicant should be given the opportunity by USAC to refile invoices on remand. We note that the service providers have now submitted their FCC Forms 473 for the funding year at issue, certifying compliance with our rules. In this instance, we waive sections any procedural deadlines, including section 54.514(a) (i.e., invoice filing deadline), that might be necessary to effectuate our ruling. *See also supra* note 9.

[13] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (waiving the deadline where applicants filed their applications beyond 14 days of the filing window deadline because of delays beyond their control).

[14] *See, e.g.*, *Academy of Math and Science Order*, , 25 FCC Rcd at 9259, para. 8 (finding special circumstances existed to justify granting waiver requests for petitioners who filed their FCC Form 471 applications within 14 days of the filing window deadline).

Academir Charter School Middle, FL, Application No. 231038700, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Academir Charter School of Math And Science, FL, Application No. 231038707, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Academir Charter School Preparatory, FL, Application No. 231038704, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Academir Preparatory of Championsgate, FL, Application No. 231038938, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Aguilar School District R E 6, CO, Application No. 231017702, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Amherst School, TX, Application No. 231038744, Request for Waiver, CC Docket No. 02-6 (filed May 12, 2023)

Appletree Early Learning Public Charter School, DC, Application No. 231038833, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Archdiocese of Atlanta Schools, GA, Application No. 231038756, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2023)

Aspen Community School Consortium, Berkeley Hall School, Carbondale Community School Consortium, Detroit Service Learning Academy, Gals Boys Consortium, Holy Cross Catholic Academy, New Legacy Charter School, Ricardo Flores Magon Academy, Rocky Mountain Classic Academy, University Prep Steele Street Inc., University Preparatory School, USD 380 Vermillion, Vega Collegiate Academy Consortium, Vista Charter School, Application Nos. 231039220, 231039139, 231039222, 231039141, 231038571, 231039216, 231039221, 231039182, 231039194, 231039219, 231039161, 231039223, 231039198, 231039202, 231039209, 231039212, 231039213, 231039156, 231039196, Request for Waiver, CC Docket No. 02-6 (filed May 4, 2023)

Bais Chana Heritage School, Inc., CA, Application No. 231038920, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2023)

Bais Chaya Mushka, CA, Application No. 231038922, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2023)

Barbour County School District, WV, Application No. 231038804, Request for Waiver, CC Docket No. 02-6 (filed May 4, 2023)

Bedford City School District, OH, Application No. 231038893, Request for Waiver, CC Docket No. 02-6 (filed May 4, 2023)

Bessemer Area School District, MI, Application No. 231024069, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Betyaakov Ateret Torah, NY, Application Nos. 231038952, 231038951, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2023)

Bnos Bais Yaakov, NY, Application No. 231038754, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2023)

Bnos Devorah, NJ, Application Nos. 231039048, 231039046, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2023)

Board of Child Care - Strawbridge School, MD, Application No. 231018635, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Bright Hope Center, NY, Application No. 231038974, 231038975, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2023)

Brighton School District 27 J, CO, Application No. 231025804, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

Bristol Township School District, PA, Application No. 231038988, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2023)

Browning School District 9 A.K.A. Browning Public Schools, MT, Application No. 231039174, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2023)

Canterbury Classical School, NC, Application No. 231038958, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Cathedral Catholic High School, Capistrano Valley Christian School, Imagine School at Land O Lakes, Imagine Charter School at North Port, Esther's Schools, Imagine Charter School Broward, Imagine Charter School at N. Lauderdale Elementary, Imagine Charter School at Weston, Imagine Schools- Chancellor Campus, Imagine School at Palmer Ranch, Imagine School at Lakewood Ranch, Imagine School at North Manatee, Imagine Schools Plantation Campus, Detroit Cristo Rey High School, Cumberland Christian Academy, Imagine International Academy of North Texas, Horizon Charter School of Tampa, Beth Haven Christian School, Trinity Christian Academy, St. Paul Elementary School, Madison Academy, Notre Dame High School, Ascension School, Application Nos. 231038364, 231038845, 231038843, 231038840, 231038660, 231038941, 231038943, 231038944, 231038945, 231038946, 231038957, 231038959, 231038962, 231038964, 231038889, 231038965, 231038966, 231038967, 231039191, 231039206, 231038008, 231038896, 231039104, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Cathedral School, NC, Application No. 231038872, Request for Waiver, CC Docket No. 02-6 (filed Apr. 27, 2023)

Catholic School Region of Central Westchester, NY, Application No. 231038719, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Catholic School Region of Dutchess, NY, Application No. 231038689, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Catholic School Region of Northeast & East Bronx, NY, Application No. 231038723, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Catholic School Region of Northeast & East Bronx, NY, Application No. 231037826, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Catholic School Region of Northern Westchester & Putnam, NY, Application No. 231038721, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Catholic School Region of Northwest & South Bronx, NY, Application No. 231038680, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Catholic School Region of Staten Island, NY, Application No. 231038690, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Central Regional School District, NJ, Application No. 231038878, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Charter Schools USA, FL, Application Nos. 231037970, 231012394, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2023)

Cheder Beer Yeshaya, NY, Application Nos. 231039067, 231039068, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2023)

Cheder Menachem Mendel, CA, Application No. 231038923, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2023)

Childrens Choice for Hearing And Talking Sacramento, CA, Application No. 231038685, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2023)

Chosen Generation Christian Academy Inc., FL, Application No. 231038538, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2023)

Circulo De La Hispanidad, NY, Application No. 231038787, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

Clayton Ridge Community School District, IA, Application Nos. 231038620, 231038618, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2023)

Copiah Academy School, MS, Application No. 231012687, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

Cornerstone Schools of Alabama, AL, Application No. 231038569, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

Cornerstone Schools of Alabama, AL, Application No. 231039125, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

Cornerstone Schools of Alabama, AL, Application No. 231038574, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

Crescent Independent School District 2, OK, Application No. 231038825, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Cripple Creek-Victor Schools Re 1, CO, Application No. 231038852, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2023)

Davenport Community School District, IA, Application No. 231039205, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Davenport Public Library, NE, Application No. 231039166, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Dayspring Christian School, CO, Application No. 231038624, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

Dierks Public School District, AR, Application No. 231038156, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Diocese of Norwich Schools, CT, Application No. 231038874, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Diocese of Scranton Catholic Schools, PA, Application No. 231038716, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Duval County School District, FL, Application No. 231039101, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Eagle Christian Academy, TX, Application No. 231039158, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

East Cleveland City School District, OH, Application No. 231038579, Request for Waiver, CC Docket No. 02-6 (filed Apr. 27, 2023)

Eckerd Youth Alternatives, Inc., FL, Application No. 231039115, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Elite High School, NY, Application No. 231038788, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

Elko County School District, NV, Application No. 231000380, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Elko Institute for Academic Achievement, NV, Application No. 231038894, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Erie Rise Leadership Academy Charter School, PA, Application Nos. 231039079, 231039077, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Esmeralda County Libraries, NV, Application No. 231025061, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Espanola Public School District, NM, Application No. 231038931, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023, May 5, 2023)

Evergreen Charter School, NY, Application No. 231039049, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Gateway Science Academy of St. Louis, MO, Application No. 231039121, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Golden Eagle Charter School District, CA, Application No. 231039112, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Greek American Institute of New York, Inc., NY, Application No. 231038789, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Gwynedd Mercy Academy High School, PA, Application No. 231038610, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Harford County School District, MD, Application No. 231039159, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Hebrew Academy of Long Beach, NY, Application Nos. 231038977, 231038976, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Hebrew Academy of Nassau County, NY, Application Nos. 231038986, 231038995, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Hillcrest Public School District, AR, Application No. 231038598, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2023)

Hillel Academy, WI, Application No. 231038791, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Holland Public School District, WI, Application No. 231038589, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Holy Infancy School, PA, Application No. 231039185, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Indian Mountain School District, CT, Application No. 231039055, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2023)

JEWELS Inclusive Preschool and Pediatric Therapy Clinic, Application No. 231038953, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Johnson County School District, GA, Application No. 231038195, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

Juneau Borough School District, AK, Application No. 231037017, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2023)

Kake City School Consortia, AK, Application No. 231038933, Request for Waiver, CC Docket No. 02-6 (filed Apr. 14, 2023)

Katz Yeshiva High School of South Florida, FL, Application Nos. 231038809, 231038810, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Ka Waihona O Ka Naauao Public Charter School, HI, Application No. 231038786, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

Lakeview Public Schools, MI, Application No. 231038928, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Laurens County Library, SC, Application No. 231038780, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Lincoln School Department, RI, Application No. 231038867, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Maine Indian Education, ME, Application Nos. 231037663, 231037515, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

Manzanita Elementary School District, CA, Application No. 231038987, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

Maplebrook School, NY, Application No. 231038785, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2023)

Marc Academy And Family Center, NY, Application Nos. 231038954, 231038955, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Maria Regina High School, NY, Application No. 231038842, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Meriden Public Library, CT, Application No. 231038875, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Mesivta of Las Vegas, NV, Application No. 231039000, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Mid-Hudson Library, NY, Application No. 231038799, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2023)

Milbank School District 25-4, SD, Application No. 231039148, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

Mineral County Library System, NV, Application No. 231023356, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Mineral County Library System, NV, Application No. 231017110, Request for Waiver, CC Docket No. 02-6 (filed Apr. 14, 2023)

Moffett School District 68, OK, Application No. 231039111, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Monte Cassino School, OK, Application No. 231037854, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

Moravia Community School District, IA, Application No. 231039167, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Mormon Trail Community School District, IA, Application No. 231038873, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Morning Star School, FL, Application No. 231038993, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Mount Clemens Community School District, MI, Application No. 231039018, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Mount Clemens Community School District, MI, Application No. 231039019, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Mount Sinai School District, NY, Application No. 231031393, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Nachlas Yisrael, NJ, Application Nos. 231038960, 231038956, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

Norfolk Collegiate Upper School, VA, Application Nos. 231038583, 231038584, 231038585, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

North Florida Child Development, Inc., FL, Application No. 231004320, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

Northern California Child Development, Inc., CA, Application No. 231039051, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2023)

Onondaga-Cortland-Madison BOCES, NY, Application Nos. 231038777, 231038708, 231035433, 231038703, 231035469, 231034099, 231039203, 231035459, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Orange County School District, FL, Application No. 231039169, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

Orange Lutheran High School, CA, Application No. 231038668, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Orlando Torah Academy, FL, Application Nos. 231039005, 231039007, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

Osborn School District R 0, MO, Application No. 231039145, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

Our Lady of Good Counsel School, NJ, Application No. 231038605, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Palmyra Area School District, PA, Application No. 231039022, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Penn-Trafford School District, PA, Application No. 231038641, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2023)

Penn-Trafford School District, PA, Application No. 231038639, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2023)

Pinal County School Office Education Service Agency, AZ, Application No. 231038728, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Pioneer Union Elementary School District, CA, Application Nos. 231039081, 231039085, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Pixley Union Elementary School District, CA, Application No. 231039193, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Point Pleasant Boro School District, Lacey Township School District, Holmdel Township School District, Manasquan School District, Camden's Promise Charter School, Ocean County Voc-Tech District, Runnemede Borough School District, Sidney Central School District, SSCTA BOCES d/b/a GST BOCES, St Lawrence-Lewis BOCES, Windsor Central School District, Troy Area School District, Application Nos. 231039211, 231039054, 231039056, 231038935, 231038948, 231038797, 231038937, 231038949, 231039137, 231039090, 231039084, 231039204, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Pryor School District 2 & 3, MT, Application No. 231038727, Request for Waiver, CC Docket No. 02-6 (filed Mar. 31, 2023)

Pueblo Rural School District 70, CO, Application No. 231019454, Request for Waiver, CC Docket No. 02-6 (filed Mar. 31, 2023)

Raymond-Knowles Union Elementary, CA, Application No. 231038311, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Riverway Learning Community, MN, Application No. 231037897, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2023)

Rock Hill School District 3, SC, Application Nos. 231039144, 231039118, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Rolling Hills Local School District, OH, Application No. 231039122, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

Sacramento Country Day School, CA, Application No. 231038669, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

San Juan Del Rio Catholic School, FL, Application No. 231038844, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Santa Rosa Consolidated Schools, NM, Application No. 231039096, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Sejong Academy of Minnesota, MN, Application No. 231039024, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2023)

Seymour Community School District, IA, Application No. 231038862, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2023)

Shady Grove School District 26, OK, Application No. 231038695, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2023)

Shattuck Independent School District 42, OK, Application No. 231038904, Request for Waiver, CC Docket No. 02-6 (filed Apr. 14, 2023)

Shuter Library of Angel Fire, NM, Application No. 231037982, Request for Waiver, CC Docket No. 02-6 (filed Apr. 6, 2023)

Siena Catholic Schools of Racine, WI, Application No. 231038979, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

St. Augustine Preparatory Academy, WI, Application No. 231038925, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

St. Clement Regional Catholic School, NY, Application No. 231038607, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

St. Dominic Elementary School, CA, Application No. 231035376, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

St. Jean Baptiste High School, NY, Application No. 231039110, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

St. John Chrysostom School, NY, Application No. 231038665, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

St. John Vianney Regional School, Application No. 231039150, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

St. Joseph School, OH, Application No. 231039147, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

St. Louis of France School, CA, Application No. 231038274, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023, duplicate May 1, 2023)

St. Lucy School, CA, Application No. 231038241, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

St. Mark's UMC Family Services Council, NY, Application No. 231038950, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2023)

St. Mary's Institute, NY, Application No. 231038581, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

St. Philip Neri School, CA, Application No. 231034368, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

St. Philip Neri School, CA, Application No. 231038345, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

St. Pius X School, KY, Application No. 231038572, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

St. Theresa School, NY, Application No. 231038667, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

The Brook Hill School, The Linfield School, Foothills Community Christian School, Cathedral Catholic High School, University Heights Academy, Trinity Christian Academy, St, Stephen Martyr School, Merritt Island Christian School, St. Annes Belfield School, St. Gregory School, Laurence School, Big Valley Christian School, Sandia Preparatory School, St. Joan Antida High School, San Diego Jewish Academy, Francis W. Parker School, Lakeside Christian School,

Ascension School, Granby School District, St. Michael, Application Nos. 231039179, 231039020, 231039098, 231039097, 231039091, 231039184, 231039057, 231039058, 231039059, 231039060, 231039062, 231039015, 231039064, 231039065, 231039149, 231039066, 231039088, 231039089, 231039092, 231039104, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

The Cheder, NY, Application No. 231039013, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2023)

The Childrens Tree Montessori School Inc., CT, Application No. 231038755, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

The Guidance Center, MI, Application No. 231038947, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2023)

Third Future Schools, CO, Application No. 231038587, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

Toledo Islamic Academy, OH, Application No. 231038942, Request for Waiver, CC Docket No. 02-6 (filed Apr. 27, 2023)

Torah Academy of Milwaukee, WI, Application Nos. 231039073, 231039075, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2023)

Torat Hayim Hebrew Academy d/b/a Tashbar Sephardic Yeshiva Katana, CA, Application No. 231038961, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2023)

Tucson Unified School District, AZ, Application No. 231038534, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Villa Maria Academy, NY, Application No. 231039116, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Visitation School, CA, Application No. 231032775, Request for Waiver, CC Docket No. 02-6 (filed May 4, 2023)

Warren County School District, GA, Application No. 231038079, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Weld County School District Re-1, CO, Application No. 231038908, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

West Feliciana Parish School District, LA, Application Nos. 231038625, 231038623, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)

Winship-Robbins Elementary School District, CA, Application No. 231039189, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

Worthington Christian School, Walden School, St. Andrew Academy, Holy Cross High School, Potters House Christian Academy, Big Picture High School – Fresno, Sacred Heart Schools, Palmetto Christian Academy, Des Plaines Public Library, MERS Goodwill Excel Center High School, Synergy School of Tomorrow, Athens Christian School, Caring and Sharing Learning School, Cristo Rey Richmond High School, St. Athanasius School, Academy Prep of St. Pete,

Academy Prep of Tampa, Westminster Christian Academy, Lake City Christian Academy, Application Nos. 231038866, 231038969, 231038970, 231038971, 231038972, 231038973, 231038980, 231039087, 231038424, 231038818, 231039012, 231038916, 231039199, 231038963, 231039045, 231039106, 231039050, 231039102, 231039095, 231039043, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Wright School, NC, Application No. 231038675, Request for Waiver, CC Docket No. 02-6 (filed Apr. 2, 2023)

Xavier College Preparatory, AZ, Application No. 231038575, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Yeshiva Har Torah, NY, Application No. 231038638, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2023)

Yeshiva Ktana of Waterbury, CT, Application No. 231039016, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2023)

Yeshivat Ateret Torah School NY, Application Nos. 231039023, 231039021, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2023)

Yeshivat Ohr Hatorah, NY, Application Nos. 231039069, 231039070, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2023)

Ministerial and/or Clerical Errors[15]

Bais Yaakov School for Girls, MD, Application No. 231039491, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2023)[16]

Joan Dachs Bais Yaakov Elementary School, IL, Application No. 211039406, Request for Review, CC Docket No. 02-6 (filed Jan. 3, 2023)

Republic Charter School District, MS, Application No. 221034169, Request for Waiver, CC Docket No. 02-6 (filed Dec. 19, 2022, supplemented Jan. 5, 2023)

Tulsa Independent School District 1, OK, Application No. 221008709, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

[15] *See*, *e.g.*, *Requests for Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools,* CC Docket No. 02-6, Order, 25 FCC Rcd at 17319, 17319-20, nn. 5, 7, 21 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant; entered the wrong FCC Form 470 number on its FCC Form 471; and permitting correction when applicant made a typographical error).

[16] Bais Yaakov School for Girls timely filed Application No. 231010109. Instead of correcting the issues on this application, however, the school filed a new application, Application No. 231039491, out of the funding window. On remand, USAC should accept Application No. 231039491 as timely filed.

Ministerial and/or Clerical Errors – FRN Omitted from FCC Form 471 Application[17]

Forrestville Valley School District #221, IL, Application No. 231039458, Request for Waiver, CC Docket No. 02-6 (filed May 4, 2023)

Ministerial and/or Clerical Errors – Invoicing[18]

Compass Academy, CO, Application Nos. 211037486, 211037264, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Johnston County Public Schools, NC, Application No. 791462, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2021)[19]

Permissible Service Implementation Delay[20]

El Monte City Elementary School District, CA, Application No. 191037101, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2022)

Johnston County Public Schools, NC, Application No. 201032627, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2023)[21]

[17] *See, e.g.*, *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521, n.19 (WCB 2008) (permitting applicant to add a request omitted from its FCC Form 471, but included on its source list). The petitioner did not realize this funding request was omitted until the FY 2023 application filing window had closed. The petitioner then filed FCC Form 471 Application No. 231039458 out-of-window for this funding request. We direct USAC to add this funding request to one of the petitioner's timely-filed FY 2023 FCC Form 471 applications or treat FCC Form 471 Application No. 231039458 as timely filed.

[18] *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 waivers where the E-Rate invoice filers entered the wrong service start date, application number, funding request number, customer bill date or inadvertently requested an invoice filing deadline extension for the wrong funding request number). We also waive, to the extend necessary, section 54.720 of the Commission's rules because the petitioner filed its waiver request within 60 days of discovering or receiving notice of the ministerial or clerical error. *See id*. at para. 12.

[19] A previous Public Notice inadvertently listed the wrong state for Johnston County Public Schools. *See Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 21-93, Public Notice, DA 23-333, at 19 and 20 (WCB Apr. 28, 2023) (indicating Kansas as the applicant's state). We are correcting the state information for this applicant, Johnston County Public Schools, in this Public Notice.

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

[21] *See supra* note 19.

Permissible SPIN Change[22]

Pima Partnership Charter Schools, Application No. 201043456, Request for Review, CC Docket No. 02-6 (filed (Nov. 10, 2021, supplemented May 10, 2022, May 11, 2023)

Waiver of Appeal Filing Deadline[23]

Cedars International Academy, TX, Application Nos. 201043532, 201043557, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2022)

Detroit Public Library, MI, Application No. 221011099, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Waiver of Special Construction Service Delivery Deadline[24]

Nacogdoches Independent School District, TX, Application No. 211019165, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

Navajo Nation Tribal Consortium, AZ, Application No. 201040969, Request for Waiver, CC Docket No. 02-6 (filed May 12, 2023)

Navajo Nation Tribal Consortium, AZ, Application No. 211028854, Request for Waiver, CC Docket No. 02-6 (filed May 12, 2023)

Navajo Nation Tribal Consortium, NM, Application No. 201042013, Request for Waiver, CC Docket No. 02-6 (filed May 12, 2023)

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[22] *See, e.g.*, *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy of Detroit West, et al; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 1960, 1961-66, paras. 5-8, 15 (WCB 2020) (allowing the applicant to receive support for service during the transition from its incumbent provider when the new provider is delayed in being able to provide the service).

[23] *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) (*ABC Unified School District Order*) (granting waivers of appeal filing deadline when the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision).

We make no finding on the underlying issues in these appeals and remand these applications back to USAC to make a determination on the merits.

[24] *See, e.g.*, *Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures).

We find that the petitioners were unable to complete implementation for reasons beyond their and their service providers' control and made good faith efforts to comply with Commission rules and procedures. Accordingly, we waive the special construction service delivery deadline and direct USAC to provide the applicants until June 30, 2024 to complete their special construction projects.

For these petitioners, we also waive any associated administrative or procedural deadlines, including the invoice filing deadline, that might be necessary to effectuate our ruling. *See supra* note 9.

Navajo Nation Tribal Consortium, NM, Application No. 211019879, Request for Waiver, CC Docket No. 02-6 (filed May 12, 2023)

Denial in Part

Late-Filed FCC Form 471 Applications[25]

Beecher-Dunbar-Pembine Schools, WI, Application Nos. 231035943, 231039271, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Islamic Academy of Alabama, AL, Application Nos. 231039270, 231038915, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Denied

Late-Filed FCC Form 471 Applications[26]

Academia Cristiana Yarah, PR, Application No. 231039264, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Academia Disipulos De Cristo (7-12), PR, Application No. 231039252, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Academia La Milagrosa, PR, Application No. 231039255, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Alma Center-Humbird-Merrillan School District, WI, Application No. 231036435, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Ameribelge Center for Education, FL, Application No. 231039434, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

Anamosa Community School District, IA, Application No. 231039279, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

Arie Crown Hebrew Day School, IL, Application Nos. 231039367, 231039366, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2023)

Bad Axe Area District Library, MI, Application No. 231039362, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2023)

[25] We grant this waiver request with respect to application nos. 231038915 and 231035943 which were filed within 14 days of the close of the window. *See, e.g.*, *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8 (finding special circumstances existed to justify granting waiver requests for petitioners who filed their FCC Form 471 applications within 14 days of the filing window deadline). We deny this waiver request with regard to application nos. 231039270 and 231039271. *See, e.g.*, *id.* at 9261-62, para. 13 (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying waivers of our rules).

[26] *See, e.g.*, *Academy of Math and Science Order*, 25 FCC Rcd at 9261-62, para. 13 (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying waivers of our rules).

Baltimore City Schools Charter Consortium, MD, Application No. 231039247, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Boston Trinity Academy, MA, Application No. 231039453, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Broward Junior Academy, FL, Application No. 231039392, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Bureau Valley Community Ut School District, IL, Application No. 231039288, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Caroline Education Community International Public School Academy, MS, Application No. 231039316, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Colegio Cristiano Oscar Correa Agosto, PR, Application No. 231039257, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Colegio San Agustin, PR, Application No. 231039259, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Colegio Santisima Trinidad, PR, Application No. 231039268, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Colegio Villas De Loisa, PR, Application No. 231039267, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Community Unit School District 16, IL, Application No. 231039315, Request for Waiver, CC Docket No. 02-6 (filed May 10, 2023)

Copper Island Academy, MI, Application No. 231039384, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Country School, MD, Application No. 231039287, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Cramerton Christian Academy, NC, Application No. 231032829, Request for Waiver, CC Docket No. 02-6 (filed Apr. 27, 2023)

Emanuel Lutheran School, WI, Application No. 231039269, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

Ephesus Adventist Academy, FL, Application Nos. 231039390, 231039389, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Esperanza Community Services, IL, Application No. 231039375, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Florida Conference Office of Education, FL, Application No. 231039214, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

General Patton School District 133, IL, Application Nos. 231039294, 231039298, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Glades County School District, FL, Application No. 231039333, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Goffstown School District, NH, Application No. 231039470, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Goodpasture Christian School, TN, Application No. 231039448, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Griffin Technology Academies, CA, Application No. 231039163, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Guidance Academy, FL, Application No. 231039383, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Harvard International Academy, FL, Application No. 231039320, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Hawaii Academy of Arts And Science, HI, Application Nos. 231039245, 231039243, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Holy Redeemer Catholic School and Parish, OR, Application Nos. 231039509, 231039498, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2023)

Iroquois West School District 10, IL, Application No. 231039386, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2023)

Ivy Hawn Charter School of the Arts, FL, Application No. 231038801, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Lamoille North Modified Unified Union School District, VT, Application No. 231039424, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2023)

Lausanne Collegiate School, TN, Application No. 231039451, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Leetonia Exempted Village School District, OH, Application Nos. 231039373, 231039380, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Life Changers Christian Academy, FL, Application Nos. 231039237, 231039236, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Lone Rock School District 13, MT, Application No. 231039275, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Lower Cape May Regional School District, NJ, Application No. 231039325, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

Mapleton School District 7, ND, Application No. 231039274, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Mena Public School District, AR, Application No. 231039400, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Mena Public School District, AR, Application No. 231039401, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Mesilas Bais Yaakov, NY, Application Nos. 231039250, 231039251, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2023)

Millennium Leadership Christian Academy, FL, Application No. 231039406, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Millennium Leadership Christian Academy, FL, Application No. 231039449, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Murl Windsor Academy, FL, Application No. 231039398, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

New Alkebulan Education Center, FL, Application No. 231039408, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

New Hope SDA School, FL, Application No. 231039436, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

New Hope SDA School, FL, Application No. 231039435, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2023)

North American Family Institute, Inc., MA, Application No. 231038857, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

North Broward Christian School, FL, Application No. 231039403, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

North Butler Community School District, IA, Application No. 231039339, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

Notre Dame Academy, MA, Application No. 231039309, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Oelwein Community School District, IA, Application No. 231039354, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

Our Lady of Fatima School-Texas City, TX, Application No. 231039353, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2023)

Parkers Prairie School District 547, MN, Application No. 231039443, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Promise Academy, TN, Application No. 231039071, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Rock County Christian School, WI, Application Nos. 231039146, 231039132, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2023)

Roxana School District 1, IL, Application No. 231033126, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

Russell Public Library, CT, Application No. 231039420, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Salem School District, CT, Application No. 231039464, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

Satsuma Public Library, AL, Application No. 231039334, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

School Admin District 04, ME, Application No. 231039278, Request for Waiver, CC Docket No. 02-6 (filed Apr. 14, 2023)

School Admin District 09, ME, Application No. 231039456, Request for Waiver, CC Docket No. 02-6 (filed May 4, 2023)

Sequoyah School, CA, Application No. 231039240, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

Shining Star Christian Schools Capitol, WI, Application Nos. 231039468, 231039469, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

St. Ann Catholic School, FL, Application No. 231039343, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

St. Ignatius College Prep School, IL, Application No. 231039327, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

St. Kilian Elementary School, WI, Application No. 231039442, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2023)

St. Mary Elementary School, CA, Application No. 231039331, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2023)

St. Mary's Catholic School, MN, Application No. 231039253, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Tate County School District, MS, Application No. 231039284, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

The Del Ray Montessori School, VA, Application No. 231039235, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

The Winston School of San Diego, CA, Application No. 231039347, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2023)[27]

Unity Christian Academy, IL, Application No. 231039277, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Valley of the Sun Waldorf Education Association, Inc. d/b/a Desert Marigold School, AZ, Application No. 231039297, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

West Delaware County Community School District, IA, Application No. 231029952, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2023)

West Fork Community School District, IA, Application No. 231039344, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

Yeshiva Ohr Tora Community School, Inc., NY, Application No. 231039450, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Late-Filed Invoice or Invoice Deadline Extension[28]

[27] The Winston School of San Diego listed the incorrect application number in its request for waiver. In this Public Notice, we are including the correct application number for the FCC Form 471 that was filed out of window.

Henrico County School District, VA, Application No. 191019903, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2023)

La Vega Independent School District, TX, Application Nos. 201033729, 201034464, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2022)

Sheboygan Area School District, WI, Application No. 211018684, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2023)

Strasburg-Franklin Local School District, OH, Application No. 201039877, Request for Waiver, CC Docket No.02-6 (filed Aug. 8, 2022)

Ministerial and/or Clerical Errors[29]

East Harlem Council for Human Services, Inc., NY, Application No. 201021520, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Jan. 24, 2023)

Untimely Filed Appeals or Waiver Requests[30]

ApplianSys LLC (Belmont Charter Networks), PA, Application No. 201041587, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

La Paloma Academy, AZ, Application No. 449071, Request for Waiver, CC Docket No. 02-6 (filed Mar. 24, 2021)

Rochdale Charter School, NY, Application Nos. 181016745, 181034009, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Shawnee School District 85, VA, Application No. 211003938, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2023)

Signal Hill School District 181, IL, Application No. 201011019, Request for Waiver, CC Docket

(Continued from previous page)

[28] 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).

[29] *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).

[30] *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 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).

No. 02-6 (filed May 17, 2021)

Emergency Connectivity Fund
WC Docket No. 21-93

Dismissed as Insufficient[31]

Semper Paratus Group, CA, No Information Provided, Request for Waiver, WC Docket No. 21-93 (filed Aug. 16, 2021)

Granted

Early Delivery[32]

Kent School District, WA, Application No. ECF202207741, Request for Waiver, WC Docket No. 21-93 (filed Apr. 13, 2023)

Kent School District, WA, Application No. ECF202207704, Request for Waiver, WC Docket No. 21-93 (filed Apr. 27, 2023)

School District of Horicon, WI, Application No. ECF202110416, Request for Waiver, WC Docket No. 21-93 (filed Apr. 19, 2023)

Tracy Unified School District, CA, ECF202114460, Request for Waiver, WC Docket No. 21-93 (filed May 3, 2023)

[31] 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by USAC, including the requirement that the request for review include supporting documentation); *see also Appeal Filing Requirements Public Notice*, 29 FCC Rcd at 13874 (reminding parties submitting appeals to the Bureau of the general filing requirements contained in the Commission's rules which, along with a proper caption and reference to the applicable docket number, require: (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Commission rule, order or statutory provision; and (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought); *Alternative Phone, Inc. Order*, , 26 FCC Rcd at 6079 (dismissing without prejudice a request for review that failed to meet the requirements of section 54.721 of the Commission's rules). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to this petition for waiver of the Emergency Connectivity Fund program rules.

[32] *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 06-122, Public Notice, DA 22-658, 2022 WL 2399676, n.25 (WCB 2022) (granting requests for waivers for equipment delivered before the start of the approved funding year). *See also* 47 CFR § 54.1708(b).

Payment Verification[33]

Ambridge School District, PA, Application No. ECF202108221, Request for Review and/or Waiver, CC Docket No. 02-6 (filed May 15, 2023, supplemented May 18, 2023)

Waiver of Service Delivery Date[34]

Post Falls School District #273, ID, Application No. ECF202105142, Request for Waiver, WC Docket No. 21-93 (filed May 1, 2023)

Denied

Late-Filed ECF FCC Form 471 Applications[35]

Shevach High School, NY, Application No. ECF222121278, Request for Waiver, WC Docket No. 21-93 (filed Apr. 21, 2022)

[33] *See, e.g.*, *Request for Review of a Decision of the Universal Service Administrator by Youthbuild Columbus Community School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 337, 339, paras. 5-6 (WCB 2011) (granting an appeal of a commitment adjustment action where applicant provided evidence of payment of non-discount share on appeal). Consistent with precedent, we also find good cause to waive section 54.1718(b)(1) of the Commission's rules, which requires petitioners to file their appeals within 30 days of an adverse USAC decision because the applicant filed its request within a reasonable period of time of receiving actual notice and there was no actual violation of program rules. *See, e.g., ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (waiving the filing deadline for petitioners that submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Excellence*, CC Docket No. 02-6, Order, 27 FCC Rcd 5182, 5183, para. 2 and n.9 (WCB 2012) (waiving the deadline where the petitioner was not aware of USAC's intent to recover funds until it received the demand payment letter issued after the appeal filing deadline had passed). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to this petition for waiver of the Emergency Connectivity Fund program rules.

[34] *See, e.g.*, *Accelerated Charter Order,* 29 FCC Rcd at 13652-53, para. 2 (allowing 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). Consistent with the six-month extension granted to some applicants on May 12, 2023, we waive the service delivery deadline and direct USAC to set a new service delivery deadline of December 27, 2023, and adjust any associated administrative or procedural deadlines, including the invoice deadline, that might be necessary to effectuate our ruling. *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405 (WCB May 12, 2023) (extending the deadline of equipment funding requests from the first and second application filing window by 180 days). We also waive any associated administrative or procedural deadlines that might be necessary to effectuate our ruling. *See supra* note 9. Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve this petition for waiver of the Emergency Connectivity Fund program rules.

[35] *See, e.g.*, *Academy of Math and Science Order*, 25 FCC Rcd at 9261-62, para. 13 (denying requests for waiver of the FCC Form 471 filing deadline where petitioners failed to present special circumstances justifying waiver of our rules).

Untimely Filed Appeals or Waiver Requests[36]

Caroline Education Community International Public School Academy, MS, Application Nos. ECF202113599, ECF202203615, ECF202209628, ECF222120934, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Feb. 7, 2023)

Shevach High School, NY, Application No. ECF202114355, Request for Waiver, WC Docket No. 21-93 (filed Feb. 24, 2022)

Rural Health Care Program
WC Docket No. 02-60

Granted

Waiver of the Site and Service Substitution Deadline[37]

CommunityHealth IT Consortium, NY, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21143451 (filed Feb. 1, 2023)

Waiver of the Service Provider Identification Number Change Deadline[38]

[36] *See, e.g.*, *Agra Public Schools Order*, 25 FCC Rcd at 5688, para. 6; *Bound Brook School District Order*, 29 FCC Rcd at 5823, para. 1 (denying requests for review and/or waiver on the grounds that the petitioners failed to (1) submit their appeals either to the Commission or to USAC within the required timeframe; or failed to submit their waiver requests to the Commission within the required deadline set forth by the Commission's rules; and (2) did not demonstrate special circumstances necessary for the Commission to waive the rule). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules. We note that the Commission adopted a shortened waiver and appeal timeframe of 30 days in the Emergency Connectivity Fund Program due to the short-term, emergent nature of the program. *See* 47 CFR § 54.1718; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740, 8746, paras. 90, 107. As such, absent special circumstances, appeals of USAC's decisions or requests for waiver of Emergency Connectivity Fund Program rules that are filed later than 30 days as required by section 54.1718 of the Commission's rules will be denied.

[37] *See Request for Waiver by GCI Communication Corp. and Southcentral Foundation*, CC Docket No. 02-60, Order, 35 FCC Rcd 5872, 5872, para. 1 (WCB 2020) (waiving the site and service substitution rule). *See also* 47 CFR § 54.625(c) ("An applicant must file their request for a corrective or operational SPIN change with the Administrator no later than the service delivery deadline as defined by § 54.626"). We direct USAC to coordinate with the applicant on filing its site and service substitution request and make no finding as to the merits of the request. We dismiss the request for a waiver of the invoice deadline as moot because, if a site or service substitution is granted, USAC will set a new invoice deadline of 120 days from the date of the revised funding commitment letter approving the SPIN change. *See* 47 CFR § 54.627(a)(2).

[38] *See Requests for Review of Decisions of the Universal Service Administrator by Bay Shore Union Free School District, et al., Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15537, 15543, para. 11 (WCB 2008) (waiving the service provider identification number (SPIN) change deadline when applicants were unaware of the need for a SPIN change until after the deadline). *See also* 47 CFR 54.624(a)(4)(B) ("An applicant must file their request for a site or service change to the Administrator no later than the service delivery deadline as defined in § 54.626."). We direct USAC to coordinate with the applicants on filing SPIN change requests and make no finding as to the merits of the request. We dismiss the request for a waiver of the invoice deadline as moot because, if a SPIN change is granted, USAC will set a new invoice deadline of 120 days from the date of the revised funding commitment letter approving the SPIN change. *See* 47 CFR § 54.627(a)(2).

Arkansas Department of Health, AR, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21164501 (filed Feb. 2, 2023)

Bootheel Counseling Services, MO; Bootheel Counseling Services – Everyday People, MO; Black River Family Practice, NC; CHCA – Healthy Connections – W.A.T.C.H. Clinic, AR; Clark County Health Department, IL; Copper Queen Community Hospital, AZ; Copper Queen Community Hospital – Bisbee, AZ; Copper Queen Community Hospital – Bisbee Rural Health Clinic, AZ; Copper Queen Community Hospital – Douglas Rural Health Clinic, AZ; Copper Queen Community Hospital – Tombstone Rural Health Clinic, AZ; HMS Animas Valley Clinic, NM; Lifelinks Mental Health, IL; New England Telehealth Consortium – Littleton Hospital Association d/b/a Littleton Regional Healthcare, ME; Yates County Public Health, NY, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 21134161, 21163371, 21267581, 21134161, 21154341, 21967771, 21146481, 21146441, 21146461, 21146411, 21146501, 21163851, 21125691, 21146491, 21968941 (filed Feb. 3, 2023)

New England Telehealth Consortium, ME, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21170551 (filed Feb. 24, 2023)

Tennessee Telehealth Consortium, TN, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21131111 (filed Feb. 24, 2023)

For additional information concerning this Public Notice, please contact James Bachtell in the Telecommunications Access Policy Division, Wireline Competition Bureau, at james.bachtell@fcc.gov or (202) 418-2694.

- FCC -

PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 23-434
Released: May 23, 2023

RURAL DIGITAL OPPORTUNITY FUND SUPPORT BID DEFAULTS ANNOUNCED; WAVELENGTH LLC'S PETITION FOR WAIVER OF THE JUNE 7, 2021 ELIGIBLE TELECOMMUNICATIONS CARRIER DOCUMENTATION DEADLINE DENIED

AU Docket No. 20-34
WC Docket No. 19-126
WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB or Bureau), and the Office of Economics and Analytics (OEA) announce that a Rural Digital Opportunity Fund (Auction 904) long-form applicant has defaulted. The long-form applicant is identified in Attachment A. We also announce a waiver denial that will result in a state-level default at a later date.

On December 7, 2020, we announced that there were 180 winning bidders in the auction and established the deadlines for winning bidders to submit their long-form applications for Rural Digital Opportunity Fund support.[1] Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.[2] All winning bidders that retained their winning bids and all related entities that were assigned winning bids were required to submit long-form applications by January 29, 2021.[3] On February 18, 2021, we announced that there were 417 long-form applicants.[4] By June 7, 2021, each Auction 904 long-form applicant was required to demonstrate, with appropriate documentation, that it has been designated as an eligible telecommunications carrier (ETC) in each of the geographic areas for which it seeks to be authorized for Auction 904 support.[5]

In Attachment A, we list the relevant winning bids associated with winning bidders or their assignees that are in default.[6] A list of the eligible census blocks covered by these winning bids will be

[1] *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888 (WCB and OEA 2020) (*Auction 904 Closing Public Notice*).

[2] *Id.* at 13890-91, paras. 9-14.

[3] *Id.* at 13892-93, para. 16.

[4] *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34, Public Notice, 36 FCC Rcd 4140 (WCB and OEA 2021) (*Auction 904 Long-Form Applicants Public Notice*).

[5] 47 CFR § 54.804(b)(5).

[6] On May 23, 2023, WCB denied Etheric Communications LLC's (Etheric) petition for reconsideration of the Bureau's decision to dismiss and/or alternatively deny its petition seeking waiver of the June 7, 2021 ETC designation documentation deadline. *Rural Digital Opportunity Fund Auction (Auction 904) et al.*, AU Docket No. 20-34 et al., Order on Reconsideration, DA 23-430 (WCB May 23, 2023). Etheric did not obtain an ETC designation from the California Public Utilities Commission by the June 7, 2021 deadline. Thus, Etheric has defaulted on all of its winning bids, which are included in Attachment A.

made available on the Auction 904 website under the "Results" tab, https://www.fcc.gov/auction/904/round-results.

Auction 904 support will not be authorized for the winning bids listed in Attachment A.[7] We consider winning bidders and assignees to be in default for these bids and subject to forfeiture. We will refer these defaulters to the Enforcement Bureau for further consideration.

A defaulter is subject to a base forfeiture per violation of $3,000.[8] A violation is defined as any form of default with respect to the census block group. In other words, there shall be separate violations for each census block group assigned in a bid.[9] So that this base forfeiture amount is not disproportionate to the amount of a winning bidder's bid, the Commission has limited the total base forfeiture to 15% of the bidder's total assigned support for the bid for the support term.[10] Notwithstanding this limitation, the total base forfeiture will also be subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.[11] In addition, any applicant that failed to submit the audited financial statements as required by the June 7, 2021 deadline will be subject to a base forfeiture of $50,000, which will be subject to adjustment upward or downward as appropriate based on criteria set forth in the Commission's forfeiture guidelines.[12]

We also dismiss as moot and/or alternatively deny Wavelength LLC's (Wavelength) petition for waiver of the June 7, 2021, ETC designation documentation deadline. Wavelength has proposed to deploy gigabit, low latency service to more than 68,000 locations in California and Arizona.

On June 7, 2021, Wavelength filed a petition for waiver, as to its application for California, of the June 7, 2021 deadline.[13] We dismiss that petition as moot because on February 2, 2023, the California

[7] On July 26, 2021, the Rural Broadband Auctions Task Force, WCB, and OEA sent a letter to certain long-form applicants that identified census blocks where concerns had been raised about whether funding those areas would be the best use of our limited universal service funds. *See* "Letters to Long-Form Applicants about Identified Census Blocks," https://www.fcc.gov/auction/904/releases. In the *Fourth RDOF Authorization Public Notice*, we waived the default forfeiture for letter-identified census blocks and in the *Eighth RDOF Authorization Public Notice* we waived the default forfeiture for non-urban areas that similarly appeared to staff as being served with 25/3 Mbps broadband and for which applicants informed the Commission that they wished to default. *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, DA 21-1560, at 9 (WCB/OEA Dec. 14, 2021); *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 22-402, at 6 n.38 (WCB/OEA Apr. 15, 2022). Accordingly, to the extent applicants filed petitions seeking waiver of the default forfeiture or other non-compliance measures for these areas, we dismiss those petitions as moot. *See* Petition of Wavelength LLC for Waiver of Section 1.21004 of the Commission's Rules, OEA Docket No. 20-34 et al. (filed Aug. 18, 2021).

[8] *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 735-36 para. 115 (2020) (*Rural Digital Opportunity Fund Order*); *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6178, para. 332 (2020) (*Auction 904 Procedures Public Notice*).

[9] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

[10] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

[11] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(10), note to paragraph (b)(10); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

[12] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6177, para. 318; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 722, para. 80; 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(10), note to paragraph (b)(10).

[13] 47 CFR § 54.804(b)(5); Wavelength, LLC Petition for Waiver of Section 54.804(b)(5) of the Commission's Rules, AU Docket No. 20-34 et al. (filed June 7, 2021) (Wavelength ETC Petition).

(continued….)

Public Utilities Commission (CPUC) issued a decision denying Wavelength's request for an ETC designation covering its Auction 904 winning bids in the state.[14] As a result, Wavelength has been unable to obtain an ETC designation covering its winning bid areas in California. On this basis alone, Wavelength cannot be authorized to receive Auction 904 support in those areas.[15]

In addition and in the alternative, we deny Wavelength's petition for waiver on the merits. Wavelength's counsel filed an *ex parte* letter on March 6, 2023, notifying the Commission of the California PUC denial of its ETC designation petition and noting that Wavelength has filed for rehearing in California. Wavelength requested that the Commission defer final action on Wavelength's RDOF application in California until "any further proceedings relating to its California ETC designation have been completed."[16] We find that it does not serve the public interest to delay action on Wavelength's Auction 904 long form application indefinitely after the CPUC has already denied Wavelength's ETC petition, and while Wavelength pursues what could be a lengthy process seeking recourse. Numerous federal and state programs have been established or are being established to fund broadband deployment. By denying Wavelength's petition for waiver, which will lead to the denial of its long-form application for California and its default of its California winning bids, we will open up the relevant areas covered by its Auction 904 winning bids to eligibility for future funding programs to the extent they remain unserved, rather than tying up these areas for an indefinite period of time with no indication that Wavelength will ultimately obtain an ETC designation from California. The Bureau expects to release a public notice in the near future announcing Wavelength's default in these areas.

Further Information Contact:

Press Information

Office of Media Relations
Anne Veigle
(202) 418-0500

(Continued from previous page)
Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule and (2) such deviation will serve the public interest. *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), cert. denied, 93 S.Ct. 461(1972)).

[14] California Public Utility Commission, Decision Granting Wavelength Internet, LLC a Certification of Public Convenience and Necessity and Denying Designation as an Eligible Telecommunications Carrier, Order, Application 21-01-009 (rel. Feb. 2, 2023).

[15] *See Rural Digital Opportunity Fund Auction et al.*, AU Docket No. 20-34 et al., Order, DA 22-912 (WCB/OEA Aug. 31, 2022) (dismissing California Internet, L.P. dba GeoLinks and Cal.Net, Inc.'s petitions for waiver as moot after the CPUC denied their requests for ETC designation).

[16] Letter from Casey Lide, Counsel to Wavelength LLC, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed Mar. 6, 2023).

General Universal Service Information	**Wireline Competition Bureau, Telecommunications Access Policy Division** Lauren Garry Heidi Lankau Katie King (202) 418-7400 **Universal Service Administrative Company** Stephen Snowman (202) 414-2725
Auction 904 Information General Auction Information, Process, and Procedures	**Office of Economics and Analytics, Auctions Division** (717) 338-2868
Post-Auction Rules, Policies, and Regulations	**Office of Economics and Analytics, Auctions Division** (202) 418-0660
Small Businesses Additional information for small and disadvantaged businesses	**Office of Communications Business Opportunities** (202) 418-0990 http://www.fcc.gov/ocbo/
Accessible Formats Braille, large print, electronic files, or audio format for people with disabilities	**Consumer and Governmental Affairs Bureau** (202) 418-0530 fcc504@fcc.gov
FCC Internet Sites	http://www.fcc.gov https://www.fcc.gov/auction/904

This Public Notice contains the following Attachment:

Attachment A: Bids in Default

-FCC-

Rural Digital Opportunity Fund Phase I
Auction ID: 904
Bids in Default

Attachment A

Date of Report: 05/23/2023

Applicant Name	FRN	Winning Bid Name	State	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Etheric Communications LLC	0013358395	CA-001-4017001	California	1	7	77	$ 50,875.00
Etheric Communications LLC	0013358395	CA-001-4017003	California	1	10	39	$ 71,885.00
Etheric Communications LLC	0013358395	CA-001-4090002	California	1	9	330	$ 119,255.00
Etheric Communications LLC	0013358395	CA-001-4090003	California	1	7	51	$ 59,675.00
Etheric Communications LLC	0013358395	CA-001-4283014	California	1	7	102	$ 103,580.00
Etheric Communications LLC	0013358395	CA-001-4287002	California	1	22	98	$ 87,090.00
Etheric Communications LLC	0013358395	CA-001-4301013	California	1	6	37	$ 152,570.00
Etheric Communications LLC	0013358395	CA-001-4301021	California	1	7	43	$ 268,495.00
Etheric Communications LLC	0013358395	CA-001-4302001	California	1	3	27	$ 88,875.00
Etheric Communications LLC	0013358395	CA-001-4332004	California	1	6	225	$ 142,435.00
Etheric Communications LLC	0013358395	CA-001-4334001	California	1	6	145	$ 77,030.00
Etheric Communications LLC	0013358395	CA-001-4351031	California	1	16	165	$ 378,335.00
Etheric Communications LLC	0013358395	CA-001-4359003	California	1	4	50	$ 55,920.00
Etheric Communications LLC	0013358395	CA-001-4401001	California	1	4	28	$ 83,530.00
Etheric Communications LLC	0013358395	CA-001-4506012	California	1	8	40	$ 194,315.00
Etheric Communications LLC	0013358395	CA-001-4506034	California	1	4	241	$ 89,915.00
Etheric Communications LLC	0013358395	CA-001-4507013	California	1	21	181	$ 1,191,390.00
Etheric Communications LLC	0013358395	CA-001-4507423	California	1	15	167	$ 55,590.00
Etheric Communications LLC	0013358395	CA-001-4507431	California	1	11	311	$ 188,770.00
Etheric Communications LLC	0013358395	CA-001-4507452	California	1	2	5	$ 51,960.00

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Etheric Communications LLC	0013358395	CA-001-4507521	California	1	6	53	$ 221,950.00
Etheric Communications LLC	0013358395	CA-001-4511011	California	1	21	239	$ 264,040.00
Etheric Communications LLC	0013358395	CA-001-4511013	California	1	73	448	$ 2,864,940.00
Etheric Communications LLC	0013358395	CA-001-4511014	California	1	7	94	$ 66,665.00
Etheric Communications LLC	0013358395	CA-001-4511015	California	1	15	50	$ 314,100.00
Etheric Communications LLC	0013358395	CA-001-4511022	California	1	3	27	$ 76,655.00
Etheric Communications LLC	0013358395	CA-001-4512021	California	1	10	77	$ 282,230.00
Etheric Communications LLC	0013358395	CA-001-4513001	California	1	5	97	$ 59,085.00
Etheric Communications LLC	0013358395	CA-001-4513003	California	1	13	262	$ 245,955.00
Etheric Communications LLC	0013358395	CA-001-4514012	California	1	4	75	$ 51,110.00
Etheric Communications LLC	0013358395	CA-009-0005042	California	1	12	187	$ 1,447,335.00
Etheric Communications LLC	0013358395	CA-013-3010002	California	1	7	82	$ 118,975.00
Etheric Communications LLC	0013358395	CA-013-3031031	California	1	19	139	$ 185,635.00
Etheric Communications LLC	0013358395	CA-013-3032052	California	1	10	142	$ 225,570.00
Etheric Communications LLC	0013358395	CA-013-3040011	California	1	10	49	$ 290,140.00
Etheric Communications LLC	0013358395	CA-013-3452031	California	1	14	80	$ 163,915.00
Etheric Communications LLC	0013358395	CA-013-3461023	California	1	1	8	$ 106,800.00
Etheric Communications LLC	0013358395	CA-013-3522021	California	1	4	85	$ 438,100.00
Etheric Communications LLC	0013358395	CA-013-3551071	California	1	24	237	$ 664,385.00
Etheric Communications LLC	0013358395	CA-013-3551083	California	1	3	18	$ 164,245.00

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Etheric Communications LLC	0013358395	CA-013-3551121	California	1	70	435	$ 2,161,885.00
Etheric Communications LLC	0013358395	CA-013-3553061	California	1	11	130	$ 293,980.00
Etheric Communications LLC	0013358395	CA-013-3560022	California	1	16	87	$ 650,840.00
Etheric Communications LLC	0013358395	CA-013-3560024	California	1	8	56	$ 258,000.00
Etheric Communications LLC	0013358395	CA-015-0002031	California	1	61	712	$ 2,672,010.00
Etheric Communications LLC	0013358395	CA-021-0103001	California	1	69	272	$ 2,426,275.00
Etheric Communications LLC	0013358395	CA-021-0103003	California	1	33	166	$ 1,632,215.00
Etheric Communications LLC	0013358395	CA-023-0012002	California	1	43	132	$ 1,245,780.00
Etheric Communications LLC	0013358395	CA-023-0101021	California	1	53	791	$ 1,903,940.00
Etheric Communications LLC	0013358395	CA-023-0101022	California	1	23	286	$ 1,286,825.00
Etheric Communications LLC	0013358395	CA-023-0101023	California	1	33	282	$ 1,054,130.00
Etheric Communications LLC	0013358395	CA-023-0102001	California	1	32	280	$ 840,775.00
Etheric Communications LLC	0013358395	CA-023-0103005	California	1	57	251	$ 1,699,385.00
Etheric Communications LLC	0013358395	CA-023-0107002	California	1	23	154	$ 593,020.00
Etheric Communications LLC	0013358395	CA-023-0108001	California	1	29	132	$ 435,748.00
Etheric Communications LLC	0013358395	CA-023-0108002	California	1	14	76	$ 182,320.00
Etheric Communications LLC	0013358395	CA-023-0109021	California	1	117	525	$ 4,526,675.00
Etheric Communications LLC	0013358395	CA-023-0111003	California	1	27	151	$ 1,023,876.00
Etheric Communications LLC	0013358395	CA-023-0111004	California	1	37	198	$ 1,082,600.00
Etheric Communications LLC	0013358395	CA-023-0112002	California	1	19	292	$ 845,482.30

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Etheric Communications LLC	0013358395	CA-023-0112003	California	1	79	473	$ 4,247,795.00
Etheric Communications LLC	0013358395	CA-023-0115002	California	1	154	1,252	$ 6,831,990.00
Etheric Communications LLC	0013358395	CA-023-0115003	California	1	90	619	$ 5,342,200.00
Etheric Communications LLC	0013358395	CA-023-0116001	California	1	110	678	$ 4,585,222.50
Etheric Communications LLC	0013358395	CA-027-0002001	California	1	20	274	$ 945,420.10
Etheric Communications LLC	0013358395	CA-027-0002002	California	1	9	56	$ 318,052.30
Etheric Communications LLC	0013358395	CA-027-0005001	California	1	26	159	$ 973,764.30
Etheric Communications LLC	0013358395	CA-027-0008001	California	1	31	516	$ 5,228,060.00
Etheric Communications LLC	0013358395	CA-033-0001002	California	1	130	776	$ 5,189,285.00
Etheric Communications LLC	0013358395	CA-033-0005013	California	1	25	85	$ 642,385.00
Etheric Communications LLC	0013358395	CA-033-0009001	California	1	9	63	$ 172,490.00
Etheric Communications LLC	0013358395	CA-033-0011001	California	1	39	554	$ 386,625.00
Etheric Communications LLC	0013358395	CA-033-0012003	California	1	14	83	$ 241,405.00
Etheric Communications LLC	0013358395	CA-033-0013001	California	1	16	130	$ 865,190.00
Etheric Communications LLC	0013358395	CA-033-0013005	California	1	25	149	$ 493,695.00
Etheric Communications LLC	0013358395	CA-041-1011001	California	1	5	26	$ 156,420.00
Etheric Communications LLC	0013358395	CA-041-1311001	California	1	11	94	$ 389,440.00
Etheric Communications LLC	0013358395	CA-041-1311002	California	1	9	245	$ 327,100.00
Etheric Communications LLC	0013358395	CA-041-1321002	California	1	49	1,167	$ 1,085,835.00
Etheric Communications LLC	0013358395	CA-041-1330001	California	1	50	577	$ 3,627,025.00

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Etheric Communications LLC	0013358395	CA-041-1330002	California	1	35	461	$ 1,402,940.00
Etheric Communications LLC	0013358395	CA-041-1330003	California	1	46	775	$ 1,715,745.00
Etheric Communications LLC	0013358395	CA-045-0102001	California	1	63	566	$ 3,536,109.50
Etheric Communications LLC	0013358395	CA-045-0102002	California	1	102	540	$ 2,864,239.00
Etheric Communications LLC	0013358395	CA-045-0102003	California	1	52	329	$ 2,478,045.00
Etheric Communications LLC	0013358395	CA-045-0102004	California	1	98	502	$ 2,940,532.00
Etheric Communications LLC	0013358395	CA-045-0103002	California	1	21	65	$ 584,410.00
Etheric Communications LLC	0013358395	CA-045-0106001	California	1	75	668	$ 4,117,148.00
Etheric Communications LLC	0013358395	CA-045-0108011	California	1	35	165	$ 1,023,855.00
Etheric Communications LLC	0013358395	CA-045-0108021	California	1	22	148	$ 657,880.00
Etheric Communications LLC	0013358395	CA-045-0109001	California	1	40	223	$ 2,113,120.00
Etheric Communications LLC	0013358395	CA-045-0110011	California	1	59	628	$ 3,012,100.00
Etheric Communications LLC	0013358395	CA-045-0110022	California	1	26	151	$ 727,635.00
Etheric Communications LLC	0013358395	CA-045-0111021	California	1	62	365	$ 2,470,425.00
Etheric Communications LLC	0013358395	CA-045-0111022	California	1	11	205	$ 1,020,695.00
Etheric Communications LLC	0013358395	CA-045-0112001	California	1	81	824	$ 6,160,150.00
Etheric Communications LLC	0013358395	CA-045-0112002	California	1	36	458	$ 1,912,320.00
Etheric Communications LLC	0013358395	CA-051-0001011	California	1	8	83	$ 859,760.00
Etheric Communications LLC	0013358395	CA-051-0001023	California	1	44	396	$ 2,082,060.00
Etheric Communications LLC	0013358395	CA-051-0001024	California	1	13	67	$ 649,349.00

Rural Digital Opportunity Fund Phase I
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Etheric Communications LLC	0013358395	CA-053-0101021	California	1	6	103	$ 113,625.00
Etheric Communications LLC	0013358395	CA-053-0101022	California	1	7	170	$ 146,315.00
Etheric Communications LLC	0013358395	CA-053-0102021	California	1	8	223	$ 224,255.00
Etheric Communications LLC	0013358395	CA-053-0102022	California	1	3	205	$ 134,575.00
Etheric Communications LLC	0013358395	CA-053-0103061	California	1	18	431	$ 722,560.00
Etheric Communications LLC	0013358395	CA-053-0105012	California	1	18	219	$ 453,430.00
Etheric Communications LLC	0013358395	CA-053-0105041	California	1	4	33	$ 109,435.00
Etheric Communications LLC	0013358395	CA-053-0106061	California	1	56	509	$ 1,856,180.00
Etheric Communications LLC	0013358395	CA-053-0107021	California	1	13	105	$ 544,335.00
Etheric Communications LLC	0013358395	CA-053-0108042	California	1	26	158	$ 966,365.00
Etheric Communications LLC	0013358395	CA-053-0109001	California	1	2	27	$ 131,345.00
Etheric Communications LLC	0013358395	CA-053-0110005	California	1	35	524	$ 1,098,755.00
Etheric Communications LLC	0013358395	CA-053-0111011	California	1	42	424	$ 3,044,565.00
Etheric Communications LLC	0013358395	CA-053-0111023	California	1	6	59	$ 261,315.00
Etheric Communications LLC	0013358395	CA-053-0112041	California	1	60	223	$ 1,664,975.00
Etheric Communications LLC	0013358395	CA-053-0113031	California	1	48	531	$ 3,039,155.00
Etheric Communications LLC	0013358395	CA-053-0113041	California	1	42	178	$ 1,015,885.00
Etheric Communications LLC	0013358395	CA-053-0114001	California	1	91	742	$ 5,886,535.00
Etheric Communications LLC	0013358395	CA-053-0114002	California	1	59	812	$ 5,966,610.00
Etheric Communications LLC	0013358395	CA-053-0115021	California	1	76	793	$ 3,096,595.00

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Etheric Communications LLC	0013358395	CA-053-0132001	California	1	12	126	$ 176,315.00
Etheric Communications LLC	0013358395	CA-053-0145001	California	1	24	388	$ 238,760.00
Etheric Communications LLC	0013358395	CA-053-0146012	California	1	13	67	$ 131,840.00
Etheric Communications LLC	0013358395	CA-053-0147001	California	1	6	89	$ 117,970.00
Etheric Communications LLC	0013358395	CA-053-0148001	California	1	44	351	$ 2,093,610.00
Etheric Communications LLC	0013358395	CA-053-0148003	California	1	19	46	$ 324,485.00
Etheric Communications LLC	0013358395	CA-055-2017001	California	1	12	272	$ 1,345,470.00
Etheric Communications LLC	0013358395	CA-055-2018001	California	1	17	259	$ 798,800.00
Etheric Communications LLC	0013358395	CA-063-0002022	California	1	17	363	$ 1,754,630.00
Etheric Communications LLC	0013358395	CA-063-0004002	California	1	10	35	$ 305,410.00
Etheric Communications LLC	0013358395	CA-063-0005011	California	1	10	88	$ 449,825.00
Etheric Communications LLC	0013358395	CA-069-0002002	California	1	10	43	$ 133,570.00
Etheric Communications LLC	0013358395	CA-069-0002003	California	1	3	7	$ 29,815.00
Etheric Communications LLC	0013358395	CA-069-0002004	California	1	31	315	$ 965,055.00
Etheric Communications LLC	0013358395	CA-069-0002005	California	1	5	49	$ 102,500.00
Etheric Communications LLC	0013358395	CA-069-0002006	California	1	24	357	$ 919,455.00
Etheric Communications LLC	0013358395	CA-069-0003002	California	1	2	10	$ 20,705.00
Etheric Communications LLC	0013358395	CA-069-0007021	California	1	5	55	$ 56,920.00
Etheric Communications LLC	0013358395	CA-069-0008021	California	1	56	231	$ 2,731,650.00
Etheric Communications LLC	0013358395	CA-069-0008022	California	1	28	214	$ 989,455.00

Rural Digital Opportunity Fund Phase I
Auction ID: 904
Bids in Default

Attachment A

Date of Report: 05/23/2023

Applicant Name	FRN	Winning Bid Name	State	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Etheric Communications LLC	0013358395	CA-075-0101001	California	1	12	318	$ 95,420.00
Etheric Communications LLC	0013358395	CA-075-0105001	California	1	8	68	$ 71,135.00
Etheric Communications LLC	0013358395	CA-075-9803001	California	1	7	18	$ 51,165.00
Etheric Communications LLC	0013358395	CA-075-9809001	California	1	25	227	$ 131,745.00
Etheric Communications LLC	0013358395	CA-081-6001001	California	1	13	199	$ 178,225.00
Etheric Communications LLC	0013358395	CA-081-6016041	California	1	2	211	$ 201,490.00
Etheric Communications LLC	0013358395	CA-081-6023001	California	1	20	200	$ 183,065.00
Etheric Communications LLC	0013358395	CA-081-6080044	California	1	11	214	$ 102,685.00
Etheric Communications LLC	0013358395	CA-081-6137003	California	1	9	52	$ 193,435.00
Etheric Communications LLC	0013358395	CA-081-6138001	California	1	23	217	$ 1,116,810.00
Etheric Communications LLC	0013358395	CA-081-6138002	California	1	35	257	$ 1,293,270.00
Etheric Communications LLC	0013358395	CA-081-6138003	California	1	6	35	$ 216,530.00
Etheric Communications LLC	0013358395	CA-081-6138004	California	1	43	282	$ 1,929,385.00
Etheric Communications LLC	0013358395	CA-083-0018001	California	1	63	590	$ 3,523,800.00
Etheric Communications LLC	0013358395	CA-085-5033122	California	1	6	30	$ 138,090.00
Etheric Communications LLC	0013358395	CA-085-5033303	California	1	5	16	$ 77,360.00
Etheric Communications LLC	0013358395	CA-085-5043081	California	1	7	53	$ 151,440.00
Etheric Communications LLC	0013358395	CA-085-5043181	California	1	18	446	$ 154,710.00
Etheric Communications LLC	0013358395	CA-085-5043222	California	1	9	505	$ 190,215.00
Etheric Communications LLC	0013358395	CA-085-5044203	California	1	9	45	$ 334,805.00

Rural Digital Opportunity Fund Phase I
Auction ID: 904
Bids in Default

Attachment A

Date of Report: 05/23/2023

Applicant Name	FRN	Winning Bid Name	State	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Etheric Communications LLC	0013358395	CA-085-5045044	California	1	12	331	$ 178,800.00
Etheric Communications LLC	0013358395	CA-085-5046011	California	1	26	272	$ 192,550.00
Etheric Communications LLC	0013358395	CA-085-5046021	California	1	31	269	$ 296,600.00
Etheric Communications LLC	0013358395	CA-085-5048021	California	1	30	631	$ 216,550.00
Etheric Communications LLC	0013358395	CA-085-5048032	California	1	18	337	$ 143,600.00
Etheric Communications LLC	0013358395	CA-085-5048051	California	1	46	930	$ 251,590.00
Etheric Communications LLC	0013358395	CA-085-5048052	California	1	28	596	$ 159,400.00
Etheric Communications LLC	0013358395	CA-085-5050011	California	1	19	422	$ 205,585.00
Etheric Communications LLC	0013358395	CA-085-5050062	California	1	32	1,215	$ 509,050.00
Etheric Communications LLC	0013358395	CA-085-5050071	California	1	12	359	$ 165,730.00
Etheric Communications LLC	0013358395	CA-085-5051002	California	1	7	148	$ 102,295.00
Etheric Communications LLC	0013358395	CA-085-5052023	California	1	53	871	$ 565,655.00
Etheric Communications LLC	0013358395	CA-085-5087042	California	1	20	196	$ 181,495.00
Etheric Communications LLC	0013358395	CA-085-5087043	California	1	14	575	$ 156,010.00
Etheric Communications LLC	0013358395	CA-085-5091021	California	1	14	248	$ 233,690.00
Etheric Communications LLC	0013358395	CA-085-5109002	California	1	1	35	$ 81,095.00
Etheric Communications LLC	0013358395	CA-085-5117051	California	1	19	134	$ 200,915.00
Etheric Communications LLC	0013358395	CA-085-5117071	California	1	54	362	$ 589,053.00
Etheric Communications LLC	0013358395	CA-085-5118001	California	1	18	403	$ 130,410.00
Etheric Communications LLC	0013358395	CA-085-5118003	California	1	15	117	$ 466,992.00

Rural Digital Opportunity Fund Phase I
Auction ID: 904
Bids in Default

Attachment A

Date of Report: 05/23/2023

Applicant Name	FRN	Winning Bid Name	State	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Etheric Communications LLC	0013358395	CA-085-5122001	California	1	28	180	$ 744,464.00
Etheric Communications LLC	0013358395	CA-085-5122002	California	1	47	630	$ 1,711,780.00
Etheric Communications LLC	0013358395	CA-085-5135001	California	1	56	365	$ 3,049,956.00
Etheric Communications LLC	0013358395	CA-087-1004003	California	1	6	242	$ 151,400.00
Etheric Communications LLC	0013358395	CA-087-1202001	California	1	50	394	$ 2,333,090.00
Etheric Communications LLC	0013358395	CA-087-1205001	California	1	19	304	$ 400,707.00
Etheric Communications LLC	0013358395	CA-087-1205002	California	1	23	324	$ 291,872.00
Etheric Communications LLC	0013358395	CA-087-1205003	California	1	14	73	$ 215,370.00
Etheric Communications LLC	0013358395	CA-087-1205005	California	1	22	232	$ 602,814.00
Etheric Communications LLC	0013358395	CA-087-1206002	California	1	12	49	$ 74,864.00
Etheric Communications LLC	0013358395	CA-087-1207003	California	1	10	65	$ 74,380.00
Etheric Communications LLC	0013358395	CA-087-1210001	California	1	16	145	$ 132,988.00
Etheric Communications LLC	0013358395	CA-087-1210002	California	1	9	109	$ 209,170.00
Etheric Communications LLC	0013358395	CA-087-1223001	California	1	20	110	$ 129,080.00
Etheric Communications LLC	0013358395	CA-087-1224001	California	1	25	398	$ 1,082,045.00
Etheric Communications LLC	0013358395	CA-087-1224006	California	1	8	40	$ 100,975.00
Etheric Communications LLC	0013358395	CA-087-1233001	California	1	23	152	$ 438,715.00
Etheric Communications LLC	0013358395	CA-089-0106031	California	1	2	41	$ 19,002.00
Etheric Communications LLC	0013358395	CA-089-0124001	California	1	13	96	$ 811,755.00
Etheric Communications LLC	0013358395	CA-089-0125001	California	1	26	165	$ 1,214,430.00

Rural Digital Opportunity Fund Phase I
Auction ID: 904
Bids in Default

Attachment A

Date of Report: 05/23/2023

Applicant Name	FRN	Winning Bid Name	State	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Etheric Communications LLC	0013358395	CA-089-0126012	California	1	52	341	$ 920,495.40
Etheric Communications LLC	0013358395	CA-089-0126013	California	1	49	577	$ 2,442,565.00
Etheric Communications LLC	0013358395	CA-089-0127021	California	1	38	546	$ 1,807,960.30
Etheric Communications LLC	0013358395	CA-089-0127022	California	1	49	791	$ 1,224,865.50
Etheric Communications LLC	0013358395	CA-089-0127023	California	1	67	619	$ 1,906,543.60
Etheric Communications LLC	0013358395	CA-093-0003002	California	1	5	49	$ 332,205.00
Etheric Communications LLC	0013358395	CA-093-0004001	California	1	75	440	$ 2,352,760.00
Etheric Communications LLC	0013358395	CA-093-0011001	California	1	3	9	$ 120,150.00
Etheric Communications LLC	0013358395	CA-097-1501002	California	1	16	405	$ 816,120.00
Etheric Communications LLC	0013358395	CA-097-1506122	California	1	48	433	$ 1,717,860.00
Etheric Communications LLC	0013358395	CA-103-0001001	California	1	52	583	$ 1,968,309.60
Etheric Communications LLC	0013358395	CA-103-0003001	California	1	15	98	$ 669,055.20
Etheric Communications LLC	0013358395	CA-105-0001011	California	1	22	144	$ 534,953.00
Etheric Communications LLC	0013358395	CA-105-0001012	California	1	62	669	$ 2,868,252.00
Etheric Communications LLC	0013358395	CA-105-0001013	California	1	34	338	$ 2,262,196.50
Etheric Communications LLC	0013358395	CA-105-0001021	California	1	30	296	$ 1,635,277.90
Etheric Communications LLC	0013358395	CA-105-0002001	California	1	92	790	$ 4,466,509.10
Etheric Communications LLC	0013358395	CA-105-0002002	California	1	47	621	$ 2,472,150.00
Etheric Communications LLC	0013358395	CA-105-0003001	California	1	60	645	$ 3,261,696.00
Etheric Communications LLC	0013358395	CA-105-0003002	California	1	78	684	$ 2,555,420.00

Rural Digital Opportunity Fund Phase I
Auction ID: 904
Bids in Default

Attachment A

Date of Report: 05/23/2023

Applicant Name	FRN	Winning Bid Name	State	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Etheric Communications LLC	0013358395	CA-105-0004001	California	1	80	645	$ 4,300,305.00
Etheric Communications LLC	0013358395	CA-105-0004002	California	1	62	363	$ 2,580,908.00
Etheric Communications LLC	0013358395	Eureka-P40-S20	California	3	36	234	$ 949,500.00
Etheric Communications LLC	0013358395	Inyo-Mono-P30-S30	California	2	23	198	$ 406,336.00
Etheric Communications LLC	0013358395	Plumas-P40-S40	California	5	19	122	$ 987,375.00
Etheric Communications LLC	0013358395	Redding-P40-S30	California	3	13	117	$ 651,705.00
Etheric Communications LLC	0013358395	Sonoma-Napa-P50-S35	California	11	103	1,230	$ 4,035,435.00
Etheric Communications LLC	0013358395	Ukiah-P30-S20	California	5	67	280	$ 2,117,305.00

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-23-435
Released: May 23, 2023

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU, IN COORDINATION WITH MULTIPLE OTHER BUREAUS, ISSUES PROCEDURES FOR PROVIDING EMERGENCY COMMUNICATIONS IN AREAS IMPACTED BY SUPER TYPHOON MAWAR

The Public Safety and Homeland Security Bureau, in coordination with the Media Bureau, Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, and Wireline Competition Bureau announces procedures to help communications service providers initiate, resume, and maintain operations in preparation for, and in the aftermath of Super Typhoon Mawar impacting Guam and the Commonwealth of Northern Mariana Islands (CNMI). Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.[1] Specifically, requests shall include the following certification: "Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862." Presentations that directly relate to the emergency posed by Super Typhoon Mawar are exempt from the restrictions of the Commission's *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.[2]

- **Media Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Super Typhoon Mawar and filed pursuant to section 73.1635 of the Commission's rules[3] may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM radio stations may file requests electronically by email to audiofilings@fcc.gov. Licensees of FM radio stations and TV stations may file requests electronically through the Licensing Management System (LMS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:
  - **Media Bureau Contact During Business Hours:**
    - **Part 73 (Radio Broadcast Services) Subparts A-H; J (as applicable):**
      - For Television Services, Kevin Harding, 202-418-7077, Kevin.Harding@fcc.gov
      - For FM Radio Services, Dale Bickel, 202-418-2706, Dale.Bickel@fcc.gov
      - For AM Radio Services, Jerome Manarchuck, 202-418-7226, Jerome.Manarchuck@fcc.gov

[1] 47 CFR § 1.2002.

[2] 47 CFR § 1.1204(a)(3).

[3] 47 CFR § 73.1365.

- **Part 76 (Multichannel Video and Cable Television Service):**
  - Sean Mirzadegan, 202-418-7111, Sean.Mirzadegan@fcc.gov
- **Part 78 (Cable Television Relay Service):**
  - Jeffrey Neumann, 202-418-2046, Jeffrey.Neumann@fcc.gov

- **Media Bureau Contact During Non-Business Hours:**
  - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- Licensees are reminded that the Commission's rules address operations during periods of emergency for licensees authorized under each of the rule parts for Broadcast Television Services, Broadcast Radio Services, and Multichannel Video and Cable Services. These service-specific rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.[4]

- **Office of International Affairs Guidance**
  - **Special Temporary Authority (Submarine Cables, International 214s, and International High Frequency):** Emergency requests for STA related to this event may be submitted by e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the ICFS at http://licensing.fcc.gov/myibfs. The Bureau will handle all STA requests as expeditiously as possible.
  - To ensure the Bureau has a complete record of the action, applicants who do not file through the ICFS should follow-up the initial request with an electronic version submitted through the ICFS as soon as possible. In this filing, operators shall note in the first description field on the electronic STA form that this is a Super Typhoon Mawar request and the date the initial request was granted.
  - **Office of International Affairs Contact During Business Hours:**
    - **Submarine Cables and International 214s**:
      - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
      - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
      - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
    - **International High Frequency**:
      - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
      - Shahnaz Ghavami, 202-418-0740, Shahnaz.Ghavami@fcc.gov
  - **Office of International Affairs Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Public Safety and Homeland Security Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Super Typhoon Mawar and filed pursuant to section 1.931 of the Commission's rules may be submitted by email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or to receive an oral STA during regular business hours,

[4] 47 CFR §§ 73.1250, 73.1680, 73.3542.

licensees may contact the following personnel: After business hours, contact the FCC Operations Center, below.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
  - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
    - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
    - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
  - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Space Bureau Guidance**
  - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to this event may be submitted by letter, e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the International Communications Filing System (ICFS) at http://licensing.fcc.gov/myibfs. All requests shall provide the technical parameters of the proposed operation and a point of contact. The Bureau will handle all STA requests on an expedited basis. Consistent with section 309(c)(2)(G) of the Communications Act, as amended, the Bureau may grant STA requests for up to 30 days.[5]
  - **Space Bureau Contact During Business Hours:**
    - **Satellite Space Stations and Earth Stations**:
      - Kathyrn Medley, 202-418-1211, Kathyrn.Medley@fcc.gov
      - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
      - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
  - **Space Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireline Competition Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of Super Typhoon Mawar may be submitted by email or, if necessary, by telephone. Providers may file requests electronically through the Electronic Comment Filing System (ECFS) but should also provide copies of any submissions simultaneously via email to the appropriate FCC staff identified below. Requests shall include supporting details concerning the relief requested, including any technical parameters and contact information.
  - **Wireline Competition Bureau Contact During Business Hours:**
    - **Emergency Requests Pertaining to Discontinuance Under Section 214 of the Communications Act, or to Network Change Notification Requirements:**
      - Rodney McDonald, 202-418-7513, Rodney.McDonald@fcc.gov
    - **Emergency Requests Pertaining to Transfer of Control Under Section 214 of the Communications Act:**
      - Jodie May, 202-418-0913, Jodie.May@fcc.gov
    - **Emergency Requests Pertaining to Numbering Resources:**

[5] 47 USC § 309(c)(2)(G).

- Michelle Sclater, 202-418-0388, Michelle.Sclater@fcc.gov
- **All Other Wireline Provider Requests:**
  - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireline Bureau Contact During Non-Business Hours:**
  - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

- **Wireless Telecommunications Bureau Guidance**
  - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Super Typhoon Mawar and filed pursuant to section 1.931 of the Commission's rules may be submitted by informal letter or email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:
  - **Wireless Telecommunications Bureau Contact During Business Hours:**
    - **Parts 22, 24, and 27 (excluding the Broadband Radio Service and Educational Broadband Service):**
      - Keith Harper, 202-418-2759-, Keith.Harper@fcc.gov
    - **Parts 27 (Broadband Radio Service and Educational Broadband Service only), 74, and 101 (excluding Public Safety):**
      - Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov
    - **Parts 80, 87, 90 (excluding Public Safety), 95, and 97:**
      - Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov
    - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
      - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
      - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
  - **Wireless Telecommunications Bureau Contact During Non-Business Hours:**
    - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

Licensees are reminded that sections 22.307, 90.407, and 101.205 of the Commission's rules address operation during periods of emergency for licensees authorized under these rule parts. These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STA requests can call the FCC's Operations Center, which is open 24 hours a day, 7 days a week, at 202-418-1122 or by email at FCCOPS@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Questions and information requests may be directed to the Commission's main telephone numbers:

- Voice (toll-free): 1-888-225-5322 (1-888-CALL-FCC)
- American Sign Language Videophone (toll-free): 1-844-432-2275

-FCC-

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-436
Released: May 23, 2023

FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO SUPER TYPHOON MAWAR

The Federal Communications Commission (FCC) is available to address emergency communications needs 24 hours a day, including throughout the weekend, especially relating to the effects of **Super Typhoon Mawar**.

The FCC reminds emergency communications providers, including broadcasters, cable service providers, wireless and wireline service providers, satellite service providers, emergency response managers and first responders, and others needing assistance to initiate, resume, or maintain communications operations to contact the FCC Operations Center for assistance at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-437
Released: May 23, 2023

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS ENROLLED USERS ABOUT THE AVAILABILITY OF PRIORITY SERVICES IN AREAS IMPACTED BY SUPER TYPHOON MAWAR

The Public Safety and Homeland Security Bureau (PSHSB) reminds enrolled users about the availability of priority services, which help support communications and continuity of operations. Current users should understand how to activate the priority treatment, so they are prepared to use the services, if necessary, during emergency response activities related to Super Typhoon Mawar.

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency manages three programs that enable National Security and Emergency Preparedness (NSEP) personnel to effectively communicate when networks are damaged, degraded, or congested. These programs include:

- Government Emergency Telecommunications Service (GETS) for wireline voice communications;
- Wireless Priority Service (WPS) for wireless communications; and
- Telecommunications Service Priority (TSP) for prioritized restoration and provisioning of communications facilities.

PSHSB reminds current users of the following information and best practices, which will increase the effectiveness of the programs:

- Make regular practice/test calls for GETS and WPS.
- Preprogram *272 for key numbers in your phone's contact list.
- Download the GETS/WPS dialer application for smartphones.
- Do *not* use GETS or WPS to dial 911.
- Test WPS after all phone changes.
- Keep your GETS card with you at all times.
- You may experience silence after entering your destination number.
- Using WPS and GETS together may help in certain circumstances.

For other helpful information, please see CISA's Helpful Tips for Users of WPS and GETS.

PSHSB also encourages other entities and organizations that are not currently enrolled, but that may qualify, to consider participating in the priority services programs. These programs are available to qualified personnel from both the public and private sectors that perform NSEP functions. Entities from the following categories may qualify to participate:

- All levels of government (federal, state, local, tribal, territorial);

- Non-governmental organizations; and
- Organizations within critical infrastructure sectors, including certain private sector entities.

For more information about the priority services programs, please visit: https://www.fcc.gov/general/public-safety-homeland-security-policy-areas-priority-services and https://www.cisa.gov/priority-telecommunications-services.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-438
Released: May 23, 2023

FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING CRITICAL COMMUNICATIONS IN AREAS AFFECTED BY SUPER TYPHOON MAWAR

The Public Safety and Homeland Security Bureau (PSHSB) encourages all entities involved with debris clearing operations and utility repairs related to the effects of Super Typhoon Mawar to take all steps necessary to avoid damaging critical communications facilities and infrastructure.

Super Typhoon Mawar is expected to cause widespread damage and significant impacts to communications services and infrastructure in Guam and the Commonwealth of Northern Mariana Islands. The aftermath of typhoons and other disasters presents numerous challenges for those working to restore essential phone and Internet services. For example, debris clearing operations to remove downed trees, replace damaged utility poles, and open roadways often result in significant, non-storm related damage to critical communications infrastructure. Such damage can disrupt communications that support the safety and life and property, including 911 calls and first responder communications.

PSHSB encourages those entities working to clear debris, repair utility lines, and restore services to ensure their activities do not damage critical communications. Crews clearing downed trees and damaged utility poles should exercise caution to not cut or damage telephone or television cables that may be entangled in the debris. Similarly, entities conducting debris and restoration efforts that require digging are reminded to coordinate with appropriate authorities to ensure buried utilities can be located to avoid damage. Teams on the ground should take proactive steps to preserve and maintain critical communications and take immediate action, if necessary, to mitigate the effects of any damage that may occur to facilities or infrastructure.

For assistance, please contact the FCC Operations Center at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.

Federal Communications Commission
Washington, D.C. 20554

DA 23-439
In Reply Refer to:
1800B3-CEG
Released: **May 24, 2023**

Park Public Radio, Inc.
c/o Jeff Sibert
3340 Utah Ave S
St. Louis Park, MN 55426

In re: **New NCE FM, St. Louis Park, Minnesota**
Facility ID No. 768436
Application File No. 167193

New NCE FM, St. Louis Park, Minnesota
Facility ID No. 768433
Application File No. 167194

Dear Applicant:

We have before us the above-referenced applications (Applications) for two new noncommercial educational (NCE) FM stations at St. Louis Park, Minnesota, filed by Park Public Radio, Inc. (Park) on November 9, 2021.[1] Neither Application satisfies the minimum distance separation (spacing) requirements set out in section 73.207 or the alternative contour overlap requirements of section 73.215 of the Commission's rules (Rules).[2] In addition, the Channel 214 Application does not satisfy the contour overlap requirements for NCE stations set out in section 73.509(a).[3] Therefore, Park seeks waivers of these rules (Waiver Requests).[4] For the reasons set forth below, we deny the Waiver Requests and dismiss the Applications for failure to satisfy the Commission's spacing and contour overlap requirements.[5]

Background. The Applications represent an alternative, according to Park, to its ongoing difficulties finding a "viable" transmitter site for its low power FM station KPPS-LP, St. Louis Park, Minnesota (KPPS-LP).[6] On July 5, 2022, the Bureau dismissed Park's most recent modification application (KPPS-LP Modification Application) as untimely and, as a separate and independent ground for disposal, denied Park's request for a waiver to allow short spacing between KPPS-LP and two first-adjacent translator stations.[7] The KPPS-LP Modification Application was contested by Central Baptist

[1] Application File Nos. 167193 (Channel 214 Application) (amended December 23, 2021) and 167194 (Channel 220 Application).

[2] *See* 47 CFR §§ 73.207 (establishing minimum distance separation requirements), 73.507 (applying the section 73.207 spacing requirements to NCE channels that are adjacent to Channels 221, 222, and 223), and 73.215 (providing a contour-overlap-based alternative for stations that do not meet the section 73.207 spacing requirements).

[3] 47 CFR § 73.509(a).

[4] Alternatively, Park requests waiver of the contour overlap provisions of 47 CFR § 73.215. Channel 220 Waiver Request.

[5] This Letter Decision does not assess the acceptability of the Applications other than to the extent specifically discussed herein.

[6] Channel 220 Waiver Request at 4-5, Channel 214 Waiver Request at 7-9.

Theological Seminary (Central Baptist), who filed a competing modification application for FM translator station K250BY, Minneapolis, Minnesota. Park's appeal of this dismissal is pending.[8] If the Applications are granted, Park states, it will dismiss the KPPS-LP modification application.[9]

On November 9, 2021, during the NCE FM new station filing window, Park filed construction permit applications for nine new full-service NCE FM stations, including the two subject Applications.[10] Five of these NCE applications were granted and two dismissed at Park's request.[11] Park states that the remaining two Applications represent a "possible solution" to its "long-standing need to relocate KPPS-LP while simultaneously allowing it to better serve the public through a much more reliable and steady signal with less interference and less chance of displacement in a busy market."[12]

Sections 73.207 and 73.215 waiver requests. Neither Application satisfies the minimum distance separations set out in section 73.207 of the Rules. The proposed new station on Channel 220 is short-spaced to third-adjacent commercial Class C station KQRS-FM, Golden Valley, Minnesota (KQRS).[13] It does not satisfy the alternative contour overlap requirements of section 73.215 with respect to KQRS because the proposed facilities: (1) create prohibited contour overlap with KQRS's hypothetical class maximum facilities;[14] and (2) do not meet the alternative minimum distance separations of section 73.215(e).[15] Therefore, in lieu of demonstrating compliance with section 73.207 and 73.215, Park

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[7] *Greg P. Skall, Esq*, Letter Decision, Application File Nos. 142489 and 142335 (MB July 5, 2022) (*Dismissal Letter*) (dismissing Application File No. 142335 (filed on March 31, 2021)).

[8] On February 6, 2023, the Bureau dismissed in part and denied in part Park's petition for reconsideration of the dismissal of the KPPS-LP Modification Application. *Greg P. Skall, Esq*, Decision on Reconsideration, Application File Nos. 142489 and 142335 (MB Feb. 6, 2023) (*Reconsideration Letter*). On March 10, 2023, Park filed an application for review of the dismissal of the KPPS-LP Modification Application. Pleading File No. 212376 (filed Mar. 10, 2023).

[9] Channel 220 Waiver Request at 2; Channel 214 Waiver Request at 2.

[10] *See generally, Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, Public Notice, 36 FCC Rcd 11458 (MB 2021).

[11] Application File Nos. 167195 (granted Jan. 12, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220114-01 (Jan. 14, 2022)); 167196 (granted May 7, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220601-01 (June 1, 2022)); 167197 (granted Nov. 30, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-3-220303-01 (Dec. 2, 2022)); 167200 (granted Feb. 15, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220217-01 (Feb. 17, 2022)); 197203 (granted Jan. 12, 2022. *See Broadcast Actions*, Public Notice, Report No. PN-2-220114-01 (Jan. 14, 2022)); 167199 (dismissed Mar. 8, 2022, per settlement agreement. *See Broadcast Actions,* Public Notice, Report No. PN-2-220310-01 (Mar. 10, 2022)); 167202 (dismissed Jan. 21, 2022, at applicant's request. *See Broadcast Actions,* Public Notice, Report No. PN-2-220125-01 (Jan. 25, 2022)).

[12] Channel 214 Waiver Request at 1-2; Channel 214 Waiver Request at 7-9.

[13] Park states that its proposed facilities are 14.8 km from KQRS. Channel 220 Waiver Request at 2. The minimum distance separation requirement under section 73.207 between a Class A and a Class C station is 95 km.

[14] For section 73.215 purposes, the relevant contours are the hypothetical class maximum of the other station. 47 CFR § 73.215(a). While the proposed Channel 220 facility does not overlap with KQRS's actual contours, it does create prohibited contour overlap with KQRS's class maximum facilities. Park claims that KQRS is unlikely to upgrade at its current allotment, and that even if it did, the resulting increase in signal strength would actually reduce the undesired to desired ratio overlap area. Channel 220 Waiver Request at 3.

[15] The minimum distance separation requirement under section 73.215(e) between a Class A and a Class C station is 89 km. 47 CFR § 73.215(e). Park states that its proposed facilities are 14.8 km from KQRS. Channel 220 Waiver Request at 2.

requests to be allowed to show that it is unlikely to cause actual interference to KQRS listeners because there is no population within the very small area where the KQRS signal would be at least 40 dB less than the relative signal strength of the proposed Channel 220 station.[16] This method of comparing the relative signal strengths of two stations is referred to as undesired-to-desired (U/D) or signal ratio methodology. Currently, the U/D methodology may be used only by FM translator applicants to satisfy the section 74.1204(d) "lack of population" exception to the contour overlap requirements of section 74.1204(a)[17] and LPFM applicants seeking second- and third-adjacent channel contour overlap waivers.[18]

Park contends that grant of the Channel 220 Waiver Request would "enable [it] to resolve its long-standing need to relocate KPPS-LP while simultaneously allowing it to increase its coverage and obtain primary status, which would serve the public interest as it would provide a much more reliable and steady signal with less interference and less chance of displacement in a busy market."[19] Park argues that the U/D methodology is appropriate here because its station's proposed power level is similar to that of a translator or LPFM station and therefore should be allowed similar flexibility regarding adjacent channel interference.[20] Park cites to second- and third-adjacent received overlap waivers in the NCE service (known as *Raleigh* waivers) for the proposition that "some de minimis interference is acceptable."[21] It also cites to two historical spacing waivers between second-adjacent NCE and commercial band stations.[22] Finally, it notes that its proposal would displace FM translator station K220JP and Class D station WMCN, but claims that there are other channels available for these secondary service stations.[23]

Park's proposed new NCE station on Channel 214 likewise does not meet the minimum distance separations set out in section 73.207 with respect to intermediate frequency (IF) commercial station KDWB-FM, Richfield, Minnesota (KDWB).[24] Park argues that, since the proposed facility would operate at less than 100 watts effective radiated power (ERP), it should be exempt from IF protection

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[16] *See* Channel 220 Waiver Request at 1.

[17] *See Living Way Ministries, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 17054 (2002) ("[I]nterference is predicted to occur where the translator's undesired signal exceeds the protected station's desired signal by more than 40 dB"). In the case of second adjacent stations, interference is predicted to occur where the translator's undesired signal exceeds the protected station's desired signal by more than 40 dB. Park states that its proposed signal would only exceed a -40 undesired-to-desired (U/D) ratio within 14 meters from its antenna, and that there is no population within that area. Channel 220 Waiver Request at 2.

[18] *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15429, para. 78 (2012); 47 CFR § 73.807(e)(1). Third-adjacent channel spacing waivers for LPFM stations are statutorily prohibited. See *Mr. John Snyder*, Letter Decision, 21 FCC Rcd 11945, 11946 (MB 2006) (citing 47 CFR § 73.807 and 114 Stat. 2762 at A-11. Formerly H. R. 5548 (106th Cong.)).

[19] Channel 220 Waiver Request at 2, 8.

[20] *Id*. at 3.

[21] Specifically, (1) second-adjacent NCE stations KFAI and KMOJ(FM), Minneapolis, Minnesota (KMOJ); (2) third-adjacent NCE stations KCMP(FM), Northfield, Minnesota (KCMP) and WRFW(FM), River Falls, Wisconsin (WRFW); and (3) KMOJ and third-adjacent channel KCMP. Channel 220 Waiver Request at 6 (also citing *Educational Information Corporation*, Memorandum Opinion and Order, 6 FCC Rcd 2207 (1991) (*Raleigh*)).

[22] Specifically, (1) NCE station KALW, San Francisco, California, and commercial band station KKDV(FM), Walnut Creek, California, and (2) NCE station WUMB, Boston, Massachusetts, commercial band station WXRV(FM), Andover, Massachusetts, and commercial band station WPRO-FM, Providence, Rhode Island. Channel 220 Waiver Request at 6.

[23] Channel 220 Waiver Request at 7.

[24] The proposed facility is about 10 km from KDWB. The required minimum distance separation is 25 km.

requirements for the same reasons that LPFM stations, Class D stations, and FM translators operating below 100 watts are exempt.[25] According to Park, there are "essentially no documented cases of actual interference between an FM translator operating below 100 Watts on an IF frequency in decades despite thousands of FM Translator stations having routinely been granted such waivers."[26]

Section 73.509 waiver requests. The Channel 214 proposal causes and receives prohibited overlap with respect to second-adjacent NCE stations KNOW-FM, Minneapolis, Minnesota (KNOW), and KFAI(FM), Minneapolis, Minnesota (KFAI).[27] Park justifies waiver of section 73.509 with respect to these stations on the basis that the new NCE station would provide a stronger and more reliable signal than KPPS-LP[28] and would resolve the "unique and messy legal situation" with Central Baptist.[29]

Typically, the Commission only considers waivers of section 73.509 where an existing NCE station seeks to modify its facilities and, as a result, would consequently: (1) receive—not cause—overlap[30] from (2) second- or third- adjacent channel stations, and (3) the public interest benefit of increased NCE service heavily outweighs the potential for interference in a very small area (*Raleigh* waivers).[31] The Bureau has found that granting waivers in these limited circumstances provides flexibility for NCE stations to modify their service areas while protecting existing service from interference.[32] Park urges us to expand *Raleigh*—at least in this case—to cover: (1) new as well as existing stations; (2) caused as well as received overlap; and (3) greater than 10% received overlap. Park contends that its proposed NCE station is functionally equivalent to an existing station because it would "essentially supplant its LPFM station and because both are NCE stations" and therefore is "in essence . . . an upgrade application for that LPFM license."[33] Regarding its proposed caused overlap, Park states that it is unlikely to cause actual interference because there is no population within the U/D area of predicted interference with KNOW and KFAI.[34] Park commits to resolving any instances of actual interference

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[25] Channel 214 Waiver Request at 6; *see generally, e.g., Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15480-81, paras. 207-210 (2012).

[26] Channel 214 Waiver Request at 6.

[27] The proposed facility would also displace translator station K214DF, which, according to Park, should be able to find a comparable facility, especially if Park voluntarily surrenders its license for KPPS-LP. Channel 214 Waiver Request at 10-11. Park also argues that K214DF's operation at "nearly the exact same parameters as proposed by this application" demonstrate that interference should not be a problem. *Id*. at 13.

[28] Channel 214 Waiver Request at 10, 12. Park also notes that as a full power broadcaster, it would be subject to increased public service commitments, such as maintaining a public inspection file and EAS service requirements. *Id*. at 13.

[29] Channel 214 Waiver Request at 4.

[30] Prohibited overlap occurs when a station's interference contour overlaps another station's service contour. The terms "overlap caused" and "overlap received" are used in reference to a specific station proposing a facility change. If Station A is proposing to expand its service contour and the new service contour will be overlapped by Station B's interference contour, Station A is said to receive overlap from B. If station B is proposing to increase its facilities so that its proposed interference contour would overlap Station A's service contour, Station B is said to cause overlap. Under some circumstances, as here, a proposal may both cause and receive overlap.

[31] *Raleigh,* 6 FCC Rcd at 2208. The Commission has delegated authority to the Bureau to waive 47 CFR § 73.509 when overlap received is 10% or less of the proposed service area. *Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, Memorandum Opinion and Order, 50 FR 27954, 27960 (1985).

[32] *See Dennis J. Kelly, Esq.*, Letter Decision, 32 FCC Rcd 7441, 7443 (MB 2017) (*Coggon*).

[33] Channel 214 Waiver Request at 7.

should they occur.[35] Park reiterates its argument that the proposed NCE station would be "indistinguishable from a technical perspective" from translator and LPFM stations operating at similar power levels.[36] Park claims that there have been no interference claims against translator or LPFM stations operating on second-adjacent channels and that stations in the same market have operated for decades with waivers for "interference received and caused."[37] Finally, although Park does not calculate the area of received overlap using the Commission standard contour prediction methodology, it states that, using the more generous U/D methodology, the area of potential interference would be around 12% of the proposed station's 60 dBu contour and would cover a population of about 8.6% of the total population within the station's service area.[38]

Discussion. We conclude that the Waiver Requests do not demonstrate the special circumstances necessary to justify waiver and, therefore, deny them. The Commission's rules may be waived for good cause shown.[39] When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.[40] The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"[41] and must support its waiver request with a compelling showing.[42] Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[43] The Commission has long held that it will grant waivers to depart from its core allocation rules, such as minimum distance separations and contour overlap limitations, "only in the most compelling circumstances."[44]

Sections 73.207 and 72.215 waiver requests. We deny Park's request for waiver of the spacing requirements of section 73.207 and/or the alternative contour overlap provisions of section 73.215.

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[34] *Id.* at 2.

[35] *Id.* at 3, 6.

[36] *Id.* at 3.

[37] Specifically, Park cites to section 73.509 waivers granted to: (1) KFAI and second-adjacent channel KMOJ; (2) KCMP and third-adjacent channel WRFW; (3) KMOJ and third-adjacent channel KCMP; and (4) second-adjacent NCE stations KMLV(FM), Ralston, Nebraska, and KLCV(FM), Lincoln, Nebraska. Channel 214 Waiver Request at 9.

[38] Channel 214 Waiver Request at 5. Our engineering analysis indicates that the proposed overlap area would be approximately 25% of the station's total 60 dBu coverage area.

[39] 47 CFR § 1.3.

[40] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969) (*WAIT Radio*).

[41] *Id.*

[42] *Greater Media Radio Co., Inc*., Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999) (*Greater Media*) (citing *Stoner Broadcasting System, Inc*., 49 FCC 2d 1011, 1012, para. 6 (1974)).

[43] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

[44] *Carroll-Harrison B'casting, Inc.*, Memorandum Opinion and Order, 67 FCC 2d 254, 256, para. 8 (1977); *see also, e.g., Greater Media Radio Company, Inc.*, Memorandum Opinion and Order, 59 FCC 2d 796, 797, para. 5 (1979) (rejecting waiver request of section 73.215(e) because "minimum mileage separation standards offer the best means for achieving an orderly, efficient, and effective development of the commercial FM broadcast service"); *Boone Biblical College*, Memorandum Opinion and Order, 19 FCC 2d 155, 155-156, para. 4 (1969) (rejecting waiver request of section 73.207 on the basis that "strict enforcement of the mileage separation rules is of paramount importance to the integrity of the entire FM assignment plan.").

Neither the Channel 220 or 214 Waiver Requests establishes special circumstances or meets the established criteria for waiver of these provisions. Because section 73.215 already provides a significant relief mechanism that was designed to avoid "complex, time-consuming and litigable" section 73.207 waiver requests,[45] the standard for waiver of either provision is high.[46] An applicant seeking a section 73.215(e) spacing waiver must establish the same criteria formerly used for section 73.207 waivers: specifically, that the proposed waiver would serve the public interest, and (1) the present transmitter site is no longer suitable, (2) non-short-spaced sites are unavailable, and (3) the proposed new site is the least short-spaced site available.[47] A section 73.215(a) waiver is warranted only in very limited circumstances, for example, to allow retention of existing service to an underserved area where the antenna cannot be directionalized to avoid the creation of contour overlap.[48]

In the Channel 220 and 214 Waiver Requests, Park fails to demonstrate that no fully-spaced sites are available, that the proposed site is the least short-spaced available, or that waiver is necessary to provide service to an underserved community where the antenna cannot be directionalized to avoid contour overlap. Instead, it simply argues that the public interest would be served by authorizing new NCE stations to serve as a functional replacement for its LPFM station, adding that the proposal would be unlikely to cause interference as predicted using the U/D methodology.[49] This argument does not meet the specific criteria for section 73.207 and 73.215 waivers. Furthermore, the two examples Park cites of historical spacing waivers between second-adjacent NCE and commercial band stations are pre-1964 short-spaced station groups that were grandfathered when the current spacing rules were adopted.[50] This precedent does not support Park's request for waiver of the current rules under the current waiver policy. Finally, Park's situation is not unique or compelling. Many licensees can have difficulty finding suitable sites for another station or be required to defend against challenges to their modification applications. This is not a "special circumstance" warranting waiver of the Commission's core FM allocations rules.

We reject Park's argument in the Channel 220 and 214 Waiver Requests that NCE stations should be afforded the same flexibility with respect to second- and third-adjacent frequency protection as LPFM

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[45] *See Mark N. Lipp, Esq.*, Letter Decision, 28 FCC Rcd 1331, 1333 (MB 2013) (citing *Greater Media*, 15 FCC Rcd at 7094-95).

[46] When it adopted section 73.215, the Commission stated that the new rule would "enable us to discontinue granting waivers of section 73.207 for co-channel and adjacent channel short-spacing." *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Assignments by Using Directional Antennas,* Report and Order, 4 FCC Rcd 1681, 1685 (1989) (*Directional Antennas Order*); *see also Greater Media*, 15 FCC Rcd at 7094-95, para. 12 ("[T]he bar for obtaining short-spacing waivers is higher under section 73.215(e) than it was under section 73.207: the interest in adhering to our technical rules is all the more compelling now that the Commission has provided for site selection flexibility in those exceptional circumstances where no fully spaced sites are available by adopting Section 73.215.").

[47] *See R&S Media*, Memorandum Opinion and Order, 19 FCC Rcd 6300, 6303, para. 8 (MB 2004) (*R&S Media*); *Townsend Broadcasting Corp*., Memorandum Opinion and Order, 62 FCC.2d 511 (1976). We will not entertain a section 73.215 waiver request based on the theory that the short-spaced station cannot construct, or is unlikely to construct, maximum class facilities. *Tower Investment Trust, Inc.*, Letter Decision, 28 FCC Rcd 1331, 1331-32 (MB 2013).

[48] *R&S Media*, 19 FCC Rcd at 2306, para. 18; *Greater Media,* 15 FCC Rcd at 7098 (citing *Amendment to Part 73 of the Commission's Rules to Permit Short-Spaced Station Assignments by Using Directional Antennas*, Memorandum Opinion and Order, 6 FCC Rcd 5356, 5360 n.27 (1991)).

[49] Channel 220 Waiver Request at 1-2, 4-7; Channel 214 Waiver Request at 1-2, 7-10.

[50] *See* Application File No. BPH-19990618IK, Exh. 1, Attach. 30, "KFJO Allocation Study and Waiver Request" at 1; Application File No. BPH-20060720ACZ, Exh. 31, Attach. 31 and 33. KFJO is the previous callsign of KKDV.

and translator stations operating at a similar power level because, from a technical standpoint, "interference does not discriminate between classes of service."[51] The Bureau has already considered and rejected this argument.[52] Such a waiver policy would systemically undermine the second- and third-adjacent protections governing NCE stations, which—unlike secondary services such as LPFM and translator stations—are not required to resolve actual interference should it occur.[53] Such a fundamental change of general applicability should be considered in a notice-and-comment rulemaking, not an individual adjudication.[54]

Section 73.509 waiver requests. As a separate and independent basis for dismissal of the Channel 214 Application, we find that Park has not justified a waiver of the NCE contour protection requirements set out in section 73.509. The Channel 214 proposal does not meet the basic criteria for a *Raleigh* waiver, nor does it demonstrate special circumstances that would justify a departure from the *Raleigh* policy in this case.

First, it is well established that *Raleigh* waivers are not available to applicants for new NCE stations.[55] Regardless of the underlying purpose of the Channel 214 Application, it is on its face an application for a construction permit for a new NCE station, and we reject Park's strained argument that, because it functionally replaces KPPS-LP, the proposed station is not a new station but is "in essence . . . an upgrade application for that LPFM license."[56] Second, the proposed facility would cause prohibited overlap with KNOW and KFAI and thus does not satisfy the *Raleigh* criterion that the proposed facility receive, but not cause, overlap.[57] The Commission has consistently rejected similar waiver requests to

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[51] Channel 214 Waiver Request at 6, Channel 220 Waiver Request at 6.

[52] *Centenary College*, Letter Decision, 23 FCC Rcd 17317, 17321-22 (MB 2008) (*Centenary College*).

[53] *See* 47 CFR § 74.1203(a); *Centenary College*, 23 FCC Rcd at 17322 ("All FM translator licensing is backstopped by an absolute prohibition on causing interference to any full-service station. There is no comparable NCE-FM licensing requirement that would protect listeners against service losses.").

[54] *See generally*, 47 U.S.C. § 553; *Capital Cities/ABC, Inc.,* Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888, para. 87 (1996) ("We do not believe . . . that it is appropriate to amend waiver policies of broad applicability in a restricted adjudicatory proceeding in which third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record.").

[55] *Coggon*, 32 FCC Rcd at 7443 (distinguishing between *Raleigh* waivers to NCE permittees and NCE applicants whose "proposal has yet to undergo the NCE comparative allocations process"); *Centenary College*, 23 FCC Rcd at 17321 ("W]hile requests for waivers of second-and third-adjacent channel overlap for new stations may have individual appeal, routine waivers of Section 73.509 . . . would undermine the Commission's well-settled NCE-FM licensing scheme. It would result in vast increases in interference levels in the congested reserved band while causing disruption to existing listening patterns. This interference interrupts the continuity of existing service provided by the Station throughout its protected service area, and thus diminishes the quality of FM service provided by the Station. Over time, the grant of numerous similar waivers would degrade the quality of existing FM reception within stations' theoretically protected 60 dBu service contours throughout the entire NCE-FM band.").

[56] Channel 214 Waiver Request at 7.

[57] *See, e.g., Spirit Radio of North Florida, Inc. c/o Aaron P. Shainis, Esq.,* Letter Decision, 24 FCC Rcd 2958, 2960 (MB 2009); *Educational Information Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 6917, 6918-19, paras. 4-5 (1997) (emphasizing the "critical distinction" between received and caused prohibited overlap). *Raleigh* authorized modifications to a station that was already causing overlap due to another station's voluntary acceptance of received overlap. *Raleigh*, 6 FCC Rcd at 2209, para. 14. All of the precedent cited by Park to support its section 73.509 waiver request involve received, not caused, interference. The Commission permits changes to caused overlap area that already exist pursuant to an earlier *Raleigh* waiver by the other station, to avoid locking the causing

create new caused interference to other stations.[58] Finally, the Channel 214 Application does not satisfy the "very small area" *Raleigh* criterion. Rather, the proposed station would receive a significant amount of overlap from KNOW: approximately 25% of its total 60 dBu coverage using the Commission's standard contour prediction methodology and 12% of its total 60 dBu coverage using the more lenient U/D methodology. This cannot be considered a "very small area" under *Raleigh*—in fact, the Commission has not delegated authority to the Bureau to waive received overlap greater than 10% of the total service area.[59] We decline to significantly expand the scope of *Raleigh* to include new stations, caused overlap, and large overlap areas, especially without any justification for doing so other than to resolve a siting issue experienced by a co-owned LPFM station.

For the above reasons, we find that the public interest would not be served by waiving the Commission's core allocations rules in this case. Park has not satisfied existing waiver criteria nor shown any additional special circumstances justifying waiver of sections 73.207 and/or 73.215, and 73.509.

Conclusion. Accordingly, IT IS ORDERED that Park's requests for waiver ARE DENIED and its two construction permit applications for new NCE FM stations at St. Louis Park, Minnesota, filed on November 9, 2021, (Application File Nos. 167193 and 167194) ARE DISMISSED for failure to comply with sections 73.207 and 73.509 of the Rules.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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station into its existing facilities. *See, e.g., Call Communications Group, Inc.*, Letter Decision, 2023 WL 1926869 at 2 (Feb. 8, 2023). That is not the case here.

[58] *See, e.g., Raleigh*, 12 FCC Rcd at 6918, paras. 4-5; *Centenary College*, 23 FCC Rcd at 17320.

[59] *See Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, Memorandum Opinion and Order, 50 FR 27954, 27960 (1985).

PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU ANNOUNCES THE AVAILABILITY OF UNUSED FUNDS TO FULLY SATISFY DEMAND FOR RURAL HEALTH CARE PROGRAM FUNDING FOR FUNDING YEAR 2023

WC Docket No. 02-60

By this Public Notice, the Wireline Competition Bureau (Bureau), in consultation with the Office of the Managing Director, announces the amount of unused funds for the Rural Health Care (RHC) Program that have been carried forward for funding year 2023.[1] The Commission's rules for the RHC Program establish a process to carry forward unused funds from past funding years for use in future funding years.[2] In consultation with the Office of the Managing Director, the Bureau must announce a specific amount of unused funds from prior funding years to be carried forward to increase available funding for future funding years.[3]

The Universal Service Administrative Company (USAC) projects that, as of April 30, 2023, $211.50 million in unused funds is available for use in future funding years beginning in funding year 2023.[4] Pursuant to the Commission's direction and section 54.619(a)(4)-(5) of the Commission's rules, the Bureau, in consultation with the Office of the Managing Director, directs USAC to carry forward up to $211.50 million in unused funds from prior funding years to the extent necessary to satisfy funding year 2023 RHC Program demand.[5]

With the carry-forward funding announced in this Notice, all eligible RHC Program funding requests filed during the funding year 2023 application filing window can be fully funded without

[1] *See* 47 CFR § 54.619(a)(5); *see also Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6584-85, para. 27 (2018) (*RHC Program Funding Cap Order*) ("The Bureau will announce the availability and amount of carryover funds during the second quarter of the calendar year."); *Promoting Telehealth in Rural America*, WC Docket 17-310, Report and Order, 34 FCC Rcd 7335, 7402, para. 142 (2019).

[2] *See RHC Program Funding Cap Order*, 33 FCC Rcd at 6584-85, paras. 24-28; *see also* 47 CFR § 54.619(a)(4)-(5).

[3] *RHC Program Funding Cap Order*, 33 FCC Rcd at 6584-85, para. 27; 47 CFR § 54.619(a)(5).

[4] Letter from Mark Sweeney, Vice President, Rural Health Care Division, USAC, to Jodie Griffin, Chief, Telecommunication Access Policy Division, FCC Wireline Competition Bureau, and Bryan Boyle, Deputy Chief, Telecommunication Access Policy Division, FCC Wireline Competition Bureau, WC Docket 02-60 (filed May 24, 2023) (*USAC Demand and Carry-Forward Funding Letter*). The amount of unused funding may fluctuate slightly due to the resolution of pending funding requests and appeals. If the actual amount of unused funds is lower than the estimated amount, USAC is directed to carry forward the lower amount.

[5] 47 CFR § 54.619(a)(4)-(5).

prioritization.[6] The RHC Program funding cap for funding year 2023 is $682,361,586.[7] The internal cap on multi-year commitments and upfront payments under the Healthcare Connect Fund Program is $172,294,354.[8] These funding year 2023 caps represent a 7.0% inflation-adjusted increase to the RHC Program funding cap and the internal cap on multi-year commitments and upfront payments from funding year 2022.[9] The estimated total RHC Program demand for funding year 2023 is $739.47 million, of which approximately $169.78 million represents demand for upfront payments and multi-year commitments in the Healthcare Connect Fund. [10]

For further information, please contact Bryan P. Boyle, Wireline Competition Bureau at (202) 418-7924 or via email at Bryan.Boyle@fcc.gov.

- FCC -

[6] *See* 47 CFR § 54.621(b) (requiring prioritization of funding requests by Priority Tiers when demand for RHC Program support exceeds available funding).

[7] *Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2023*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, DA 23-178, 2023 WL 2436840, at *1 (WCB Mar. 3, 2023). The 2023 funding year runs from July 1, 2023 to June 30, 2024.

[8] *Id*.

[9] *Id*.

[10] *See USAC Demand and Carry-Forward Funding Letter*. The $ 739.47 million total RHC Program demand includes the gross demand estimate of $711.42 million from all program funding requests filed during the application filing window and the projected USAC administrative expenses of $28.05 million. *Id*.

PUBLIC NOTICE

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

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

DA 23-441
Released: May 24, 2023

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

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-125[1]

Comments Due: June 8, 2023

Voxology Carrier Services, Inc. (Voxology), an interconnected Voice over Internet Protocol (VoIP) provider, filed a Numbering Authorization Application (Application) pursuant to section 52.15(g)(3) of the Federal Communications Commission's rules, seeking authorization to obtain North American Numbering Plan telephone numbers directly from the Numbering Administrator.[2] In its Application, Voxology indicates that it intends to request numbers initially in Illinois and eventually throughout the United States, including its territories.[3]

In its Application, Voxology includes the contact information and acknowledgements required by section 52.15(g)(3)(i) of the Commission's rules.[4] Voxology provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.[5] Voxology also certifies that it complies with the contribution, regulatory fee, and 911 obligations set forth in section 52.15(g)(3)(i)(E).[6] In addition, Voxology certifies that it has the financial, managerial, and technical expertise to provide reliable service.[7] Voxology 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

[1] We assign WC Docket No. 23-125 for this Application and all related filings by the Applicant and interested parties. *See Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

[2] *See* Application of Voxology for Authorization to Obtain Numbering Resources, WC Docket No. 23-125 (filed Jan. 30, 2023), https://www.fcc.gov/ecfs/document/1013097566274/1; *see also* 47 CFR § 52.15(g)(3).

[3] Application at 1. *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*).

[4] Application at 1-2, 2; *see* 47 CFR § 52.15(g)(3)(i)(A)-(C), (F).

[5] Application at 2; *see* 47 CFR § 52.15(g)(3)(i)(D).

[6] Application at 2; *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.

[7] Application at 2; *see* 47 CFR § 52.15(g)(3)(i)(F).

regulatory agency, for failure to comply with any law, rule, or order.[8] Finally, Voxology 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.[9]

GENERAL INFORMATION

The Application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined Application. The Commission reserves the right to return any Application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 52.15(g)(3)(ii) of the Commission's rules, interested parties may file comments in WC Docket No. 23-125 **on or before June 8, 2023**.[10] Commenters must serve a copy of comments on Voxology no later than the above comment filing date.

Parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.

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

1) 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.

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

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

[8] Application at 2; *see* 47 CFR § 52.15(g)(3)(i)(F).

[9] Application at 2; *see* 47 CFR § 52.15(g)(3)(i)(G); *see also* 21 U.S.C. § 862.

[10] 47 CFR § 52.15(g)(3)(ii).

47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[11] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

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[11] *See* 47 CFR § 1.45(c).

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

In the Matter of Schlage Lock Company LLC's Request for Waiver of Section 15.519(a) and 15.519(a)(2) of the Commission's Rules	)))))	ET Docket No. 22-248

ORDER

Adopted: May 24, 2023 **Released: May 24, 2023**

By the Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. By this order, we grant a request by Schlage Lock Company LLC (Schlage) to waive Sections 15.519(a) and 15.519(a)(2) of our rules governing ultrawideband (UWB) devices.[1] These rules require UWB devices to be handheld while operating and prohibit use of antennas mounted on outdoor infrastructure, respectively.[2] For the reasons discussed below, we find there is good cause to grant Schlage's request.

II. BACKGROUND

2. The Schlage locking system is designed to provide more secure entry to locked spaces by utilizing ultra-wide band technology (UWB) in conjunction with traditional Bluetooth technology.[3] In its waiver request, Schlage describes how its locks, which it intends to market for use in residential environments, would utilize the UWB functionality to acquire ranging information which determines user's location in proximity to the lock.[4] Based on this ranging information, the access control determines a secure "Proof of Presence" by establishing the distance of the user using a secure time-of-flight measurement.[5] Schlage explains that this measurement prevents the possibility of relay attacks and prevents tricking a lock into opening via boosting of a signal when using a wireless, keyless entry system, which makes the incorporation of UWB functionality preferable to using a Bluetooth-only lock design.[6] Schlage's waiver request pertains only to the UWB aspect of its locking system.

[1] *Schlage Lock Company Request for Waiver of Section 15.519(a), and 15.519(a)(2)) of the Commission's Rules* (filed April 7, 2022) (Schlage Waiver Request). *See also* 47 CFR §§ 15.519(a) and 15.519(a)(2).

[2] *See* 47 CFR §§ 15.519(a) and 15.519(a)(2).

[3] Schlage Waiver Request at 2-3. Bluetooth is a short-range wireless technology standard that is designed to operate on an unlicensed basis in the 2.4 GHz frequency band.

[4] Schlage Waiver Request at 3-4.

[5] *Id.* at 3.

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

3. To allow for the certification and marketing of its lock system, Schlage requests to waive Sections 15.519(a) and 15.519(a)(2) of the Commission's rules.[7] Section 15.519(a) requires UWB devices to be hand-held and not employ a fixed infrastructure.[8] Section 15.519(a)(2) prohibits the use of antennas mounted on outdoor infrastructure like the outside of a building, telephone pole, or any fixed infrastructure.[9] The underlying purpose of the rule is to avoid development of large-scale communications systems that could adversely impact the authorized services, and to ensure that the UWB devices would only transmit when it is sending information to an associated receiver.[10] According to Schlage, its system will employ directional planar antennas designed for frequencies ranging from 6 GHz to 10 GHz.[11] Because Schlage's UWB locks and readers ("access control devices," "locks," or "devices") will be installed on residential entranceways and doors, Schlage seeks a waiver of these rules.[12]

4. Schlage's lock system will operate under the Commission's Part 15 rules governing the operation of UWB devices.[13] Part 15 permits low-power radio frequency devices to operate without an individual license from the Commission.[14] Unlicensed transmitters using UWB technology, which are governed by Subpart F of Part 15, employ very narrow or short-duration pulses that result in very large transmission bandwidths.[15] UWB devices share frequency bands with authorized radio services and, like all unlicensed devices, may not cause harmful interference to authorized radio services and must accept interference that may be caused by the operation of other stations and devices.[16]

5. The Office of Engineering and Technology (OET) issued a Public Notice on July 5, 2022, seeking comment on Schlage's waiver request.[17] In response, the Commission received four comments all of which support granting the waiver request.

III. DISCUSSION

6. We are authorized to grant a waiver under Section 1.3 of the Commission's rules if the petitioner demonstrates good cause for such action.[18] Good cause, in turn, may be found and a waiver

[7] Schlage Waiver Request at 4.

[8] 47 CFR § 15.519(a).

[9] 47 CFR § 15.519(a)(2).

[10] *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission* Systems, First Report and Order, ET Docket 98-153, 17 FCC Rcd 7435, 7503, para 199 (2002) (*UWB First R&O*).

[11] Schlage Waiver Request at 4. A directional antenna is an antenna that radiates or receives radio wave power in specific directions. A planar antenna is one in which all the elements are in one plane, which makes the antenna two dimensional (e.g., a microstrip or printed circuit board antenna). Thus, a directional planar antenna is a two dimensional antenna used to radiate or receive radio waves in a specific direction.

[12] *Id.* at 3.

[13] *Id*.

[14] 47 CFR §§ 15.1 *et seq.*

[15] 47 CFR §§ 15.501-15.525. Several of these rules address specific UWB applications, such as ground penetrating radar, medical imaging, and surveillance systems, that are not directly applicable here. Schlage proposes to operate its devices under those parts of Subpart F that govern the authorization and use of handheld UWB systems. Schlage Waiver Request at 1, 5-10.

[16] 47 CFR § 15.5(b).

[17] *Office of Engineering and Technology Seeks Comment on Schlage's Request for Waiver of Section 15.519(a) and 15.519(a)(2) of the Commission's Rule for Handheld UWB Systems*, Public Notice, ET Docket 21-248, (Public Notice).

[18] 47 CFR § 1.3. *See also ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (D.C. Cir. 2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

granted "where particular facts would make strict compliance inconsistent with the public interest."[19] To make this public interest determination, the waiver cannot undermine the purpose of the rule and there must be a stronger public interest benefit in granting the waiver than in applying the rule.[20]

7. The technical and operational standards in Part 15 were adopted to ensure that UWB devices do not cause harmful interference to authorized radio services.[21] As discussed below, we find nothing in the record to indicate that Schlage's devices would differ from other UWB devices such that they would pose an increased risk of causing harmful interference to authorized radio services. As an initial matter, we also note that just like all UWB devices, Schlage plans to design its readers to emit a significantly low power signal.[22] The current rules allow power levels of -41.3 dBm in the 6 to 10 GHz range in which this device is requesting to operate, and Schlage is not seeking a waiver of these requirements.[23]

8. With respect to the rules for which it seeks a waiver, Schlage states that its system does not share the characteristics of a wide-area communications system – instead, it is designed to produce singular communications sessions between a user and the associated lock.[24] Moreover, the nature of the Schlage devices involve communications that are short range, for a short interval of time, limited in communication, and primarily operates close to the ground.[25]

9. The UWB feature of these devices would only operate when in close proximity (i.e., within approximately 15 feet) of a valid access credential.[26] The credentialing mechanism occurs prior to any emission of UWB signal and utilizes the Bluetooth Low Energy (BLE) protocol.[27] The device does not emit a UWB signal unless a valid credential is first exchanged over BLE.[28] The emitted UWB signal is of extremely brief moments, not more than one millisecond in duration.[29] Even in cases when a UWB connection cannot be established or is lost, the system only attempts to make another connection by transmitting no more than 1 millisecond every 100 milliseconds.[30] After that, the system employs an alternative mechanism of access control that does not rely on UWB.[31] In addition to the device not emitting a UWB signal unless a valid access credential is nearby, it also does not emit UWB signals as

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

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

[21] *See UWB First R&O*, 17 FCC Rcd 7435 *passim* (2002); *see also* 47 CFR. §§ 15.501-15.525.

[22] Schlage Waiver Request at 8.

[23] *See* 47 CFR § 15.519.

[24] *See* Schlage Waiver Request, Exhibit 1.

[25] Schlage Waiver Request at 4, 7.

[26] *Id*.

[27] *Id*. *See also* Exhibit 1 (where prior to any UWB ranging session, BLE is used for Advertising, Establishing Connection, Establishing Secure Channel, Transmitting Access Credential, Transmitting Results, Exchanging UWB Parameters, Transmitting UWB Session Key, and Closing BLE Session).

[28] Schlage Waiver Request at 4, 7.

[29] *Id.* at 8 (these devices would likely emit UWB signal for less than one second per device per day).

[30] *Id.*

[31] *Id.* at 4-7.

part of its duty cycles.[32] If a credential is not valid for that particular device, then there would be no communication over UWB.

10. Schlage's access control devices would be limited to deployment in residential units.[33] These devices only communicate with the user's access credential and would not be communicating with other UWB devices off of the property. Even if multiple adjacent residences use the same Schlage products, the devices will not communicate over UWB with each other.[34] Similarly, in cases when there are multiple proper access credentials near the same device, it will communicate with each of them as they are time-multiplexed on the same 500 MHz bandwidth channel. However, the communications would not happen at the exact same time.[35] Based on these reasons, we agree that this implementation will not create a large-area communication system and thus will not raise the potential for causing harmful interference to authorized users of the band that had prompted the Commission to adopt the rules we are now being asked to waive.

11. We also recognize that Schlage has taken further steps that provide us with added confidence that its system will not cause harmful interference in actual use. The reader uses directional type antennas with beam patterns primarily in the azimuthal plane, directed horizontally towards the ground, therefore reducing any potential interference to satellite receivers operating within the UWB frequency range under evaluation here.[36] Schlage claims that because of the type of antenna being used and its positioning, there would be no "bleed over" effects to signals outside of the area between the access credential and the device.[37] Moreover, Schlage has stated that it has designed and will market its system for installation on the ground floor of residential properties, which will further accentuate the benefits of the horizontal planar system design.[38] Finally, Schlage will limit sales to no more than 100,000 units per year.[39]

12. We also find support in the record developed as a result of the Public Notice, in which all interested parties supported the waiver request.[40] For example, NXP Semiconductors states that the volume of potential applications as a result of this waiver is significantly smaller than that of handheld devices, which are already permitted in the potential deployment locations without the need of a waiver.[41] It further notes that UWB transmissions will be activated only when the key and lock are within short range of each other and a transmission setup has been arranged via Bluetooth.[42]

13. We also note that grant of this waiver does not relieve Schlage of its obligation to ensure that its devices operate consistent with the rules applicable to all UWB devices that operate on an unlicensed basis, including the requirement that they do not cause harmful interference to other

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[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.* at 4.

[36] *Id.* at 9.

[37] *Id. See also* NXP Semiconductors Comments at 3-4 (claiming that the Schlage lock system has minimal risk of interference because of the proposed antenna design which radiates primarily in the azimuthal plane, thus avoiding radiating harmful interference to higher elevation angles).

[38] The installation guidance would limit the mounting height of the device to 48 inches above the ground. Schlage Waiver Request at 8.

[39] Schlage Waiver Request at 3-4.

[40] *See* generally NXP Semiconductors Comments, HID Global Comments, and FiRa Consortium Comments.

[41] NXP Semiconductors Comments at 3.

[42] *Id*.

authorized users.[43] In furtherance of this interest, and in addition to the technical and operational restrictions imposed as a condition of the waiver, we also impose certain reporting requirements on Schlage.[44] Schlage shall submit, annually for the first three years after the date of grant of this waiver, a report that identifies any known interference complaints and their resolution. During that time, Schlage shall be prepared to halt the sale and marketing of devices subject to this waiver if OET so directs.

14. For these reasons, we conclude that Schlage has adequately demonstrated that its product will not undermine the purpose of the rule as it will not create the type of wide-area communications system that the Commission was concerned could cause harmful interference to authorized users of the band when it adopted the rules. Accordingly, even though the portion of the system associated with the physical lock would not be hand held, and the system would include devices installed on fixed outdoor infrastructure (i.e., residential entry doors), a limited waiver of Sections 15.519(a) and 15.519(a)(2) of our rules is warranted. We observe that this product is designed to comply with all other technical limits in our rules for UWB systems, except for those we are waiving. We also note that based on the description of Schlage in its waiver request, certain aspects of this waiver request are consistent with the previous waiver requests granted by OET.[45]

15. Considering the importance of security, and low risk of harmful interference, we find a stronger public interest benefit in granting the waiver than in applying the rule. Schlage's device will not only be able to provide access security, reduce risk of an unauthorized person entering the locked areas and track entrants in case of emergency, but will also support the availability of additional types of secure locks in the marketplace.[46]

16. For these reasons, we conclude that there is good cause to waive Sections 15.519(a) and 15.519(a)(2) of Commission's rules to permit the certification, marketing and operation of Schlage's UWB lock devices. This waiver is conditioned on the following conditions:

1) Schlage's device shall be certified by the Commission via an accredited Telecommunication Certification Body, and the certification application shall include a copy of this waiver order;
2) UWB sessions shall only be initiated following the discovery process and successful realization of qualifying credentials via 2.4 GHz Bluetooth operation;
3) UWB sessions shall only proceed until either the system identifies the user's intent to open the door or the user leaves the area by exiting the perimeter;
4) The UWB session shall not activate until a Bluetooth Low Energy connection has been made and the user's access credential has been identified;
5) The UWB session shall be terminated upon successful door opening sequence;
6) The ranging cycle occurs no more frequently than once every 100 milliseconds;
7) The UWB system shall only transmit when sending information to an associated receiver;
8) UWB operations shall be confined to the 6-10 GHz frequency range with an antenna that has its main beam in the azimuthal plane;
9) Schlage shall submit, annually for the first three years after the date of grant of this waiver, a report that identifies any known interference complaints and their resolution;
10) Schlage shall sell no more than 100,000 units per year;

[43] *See, e.g.*, 47 CFR § 15.5(b).

[44] *See infra* para. 16.

[45] *See* 35 FCC Rcd 12912; 35 FCC Rcd 11347; and 30 FCC Rcd 8377. *See also, In the Matter of Assa Abloy Group For Waiver of 15.519(a), and 15.519(a)(2) of the Commission's Rules Applicable to Ultra-Wideband Devices,* Waiver Order, ET Docket 21-267, (OET 2022) (Assa Abloy Waiver Order).

[46] Schlage Waiver Request at 11.

11) Schlage shall be prepared to halt the sale and marketing of devices subject to this waiver if OET so directs.[47]

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

18. IT IS FURTHER ORDERED that if no petitions for reconsiderations or applications for review are timely filed, this preceding SHALL BE TERMINATED, and ET Docket No. 22-248 IS CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Ronald T. Repasi
Chief, Office of Engineering and Technology

[47] *See supra* para. 13.

PUBLIC NOTICE

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

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

DA 23-443
Released: May 24, 2023

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

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-130[1]

Comments Due: June 8, 2023

3 Com, LLC. (3 Com), an interconnected Voice over Internet Protocol (VoIP) provider, filed a Numbering Authorization Application (Application) pursuant to section 52.15(g)(3) of the Federal Communications Commission's rules, seeking authorization to obtain North American Numbering Plan telephone numbers directly from the Numbering Administrator.[2] In its Application, 3 Com indicates that it intends to initially request numbers in New Jersey and New York.[3]

In its Application, 3 Com includes the contact information and acknowledgements required by section 52.15(g)(3)(i) of the Commission's rules.[4] 3 Com provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.[5] 3 Com also certifies that it complies with the contribution, regulatory fee, and 911 obligations set forth in section 52.15(g)(3)(i)(E).[6] In addition, 3 Com certifies that it has the financial, managerial, and technical expertise to provide reliable service.[7] 3 Com 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.[8] Finally, 3 Com certifies that no party to the Application is

[1] We assign WC Docket No. 23-130 for this Application and all related filings by the Applicant and interested parties. *See Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

[2] *See* Application of 3 Com for Authorization to Obtain Numbering Resources, WC Docket No. 23-130 (filed Mar. 8, 2023), https://www.fcc.gov/ecfs/document/1030895951155/1; *see also* 47 CFR § 52.15(g)(3).

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

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

[5] Application at 6; *see* 47 CFR § 52.15(g)(3)(i)(D).

[6] Application at 7; *see* 47 CFR § 52.15(g)(3)(i)(E); *see also* 47 CFR §§ 1.1154, 52.17, 52.32, 64.604(c)(5)(iii); 47 CFR pts. 9 and 54, subpt. H.

[7] Application at 7; *see* 47 CFR § 52.15(g)(3)(i)(F).

[8] Application at 8; *see* 47 CFR § 52.15(g)(3)(i)(F).

subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.[9]

GENERAL INFORMATION

The Application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined Application. The Commission reserves the right to return any Application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 52.15(g)(3)(ii) of the Commission's rules, interested parties may file comments in WC Docket No. 23-130 **on or before June 8, 2023**.[10] Commenters must serve a copy of comments on 3 Com no later than the above comment filing date.

Parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.

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

1) 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.

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

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their

[9] Application at 8; *see* 47 CFR § 52.15(g)(3)(i)(G); *see also* 21 U.S.C. § 862.

[10] 47 CFR § 52.15(g)(3)(ii).

initial filings. New issues may not be raised in responses or replies.[11] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

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[11] *See* 47 CFR § 1.45(c).

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

In the Matter of	)	MB Docket No. 23-56
	)	CSR-9007-A
TV-49, Inc.	)	
	)	MB Docket No. 23-57
For Modification of the Television Market of	)	CSR-9008-A
Station WZME, Bridgeport, Connecticut	)	
	)	MB Docket No. 23-58
	)	CSR-9009-A

MEMORANDUM OPINION AND ORDER

Adopted: May 24, 2023 **Released: May 24, 2023**

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. TV-49, Inc. (WZME or Petitioner), licensee of television station WZME, Bridgeport, Connecticut (Facility ID No. 70493) (WZME or Station) filed the above-captioned Petitions[1] requesting modification of the Stations' television market to include the communities located in the New York Designated Market Area (DMA) and served by Comcast, Spectrum, and Altice cable systems that are not currently included in WZME's television market.[2] The Petitions are unopposed. For the reasons stated below, we grant the Petitions.

II. BACKGROUND

A. Market Modification Procedures

2. Pursuant to section 614 of the Communications Act of 1934, as amended (the Act), and implementing rules adopted by the Commission in its *Must Carry Order*, commercial broadcast television stations are entitled to assert mandatory carriage rights on cable systems located within the station's

[1] *See TV-49, Inc. for Modification of the Television Market for Station WZME, Bridgeport, Connecticut, Facility ID 70493*, Petition for Special Relief, MB Docket No. 23-56 (filed Feb. 15, 2023) (Comcast Petition); *TV-49, Inc. for Modification of the Television Market for Station WZME, Bridgeport, Connecticut, Facility ID 70493*, Petition for Special Relief, MB Docket No. 23-57 (filed Feb. 15, 2023) (Spectrum Petition); *TV-49, Inc. for Modification of the Television Market for Station WZME, Bridgeport, Connecticut, Facility ID 70493*, Petition for Special Relief, MB Docket No. 23-58 (filed Feb. 15, 2023) (Altice Petition) (collectively, the Petitions). The Media Bureau released a public notice seeking comment on the Petitions. Special Relief and Show Cause Petitions, Public Notice, Report No. 0506 (MB Feb. 17, 2023) (*Public Notice*). A corrected *Public Notice* was subsequently issued eliminating a typographical error. *See* Special Relief and Show Cause Petitions, Public Notice, Report No. 0506-A (MB Mar. 15, 2023).

[2] The Petitions specify the business names under which each cable operator conducts business. *See* Comcast Petition at 1; Spectrum Petition at 1; Altice Petition at 1. The Petitions seek to add the communities identified therein (the Communities). Comcast Petition at 1 and Exhibit A; Spectrum Petition at 1 and Exhibit A; Altice Petition at 1 and Exhibit A. The Petitioner is seeking to add the communities identified on Exhibit A herein.

market.[3] A station's default market for this purpose is its DMA as defined by Nielsen Media Research.[4] A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the continental United States is allocated to a market based on which stations receive a preponderance of total viewing hours in the county.[5]

3. Under the Act, however, the Commission also is directed to consider changes in a station's local market. Section 614(h)(1)(C) provides that the Commission may:

> with respect to a particular television broadcast station, include additional Communities within its television market or exclude communities from such Station's television market to better effectuate the purposes of this section.[6]

In considering such requests, the Act provides that:

> the Commission shall afford particular attention to the value of localism by taking into account such factors as –
>
> (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
>
> (II) whether the television station provides coverage or other local service to such community;
>
> (III) whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;[7]
>
> (IV) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
>
> and
>
> (V) evidence of viewing patterns in cable and noncable households within

[3] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2976-77, paras. 42-47 (1993) (*Must Carry Order*).

[4] Section 614(h)(1)(C) of the Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television market based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 CFR § 76.55(e). *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (*Modification Final Report and Order*).

[5] For purposes of Nielsen's calculation, both over-the-air and cable television viewing are included. For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

[6] 47 U.S.C. § 534(h)(1)(C).

[7] The STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014), enacted December 4, 2014 added a new statutory factor, denominated as factor III above. *See also Amendment to the Commission's Rules Concerning Mkt. Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014*, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Mod. Order*).

the areas served by the cable system or systems in such community.[8]

4. In order to establish a station's relationship to the community at issue as required by the Act, section 76.59(b) of the Commission's rules requires requests for market modification to be supported by the following evidence:

> (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
>
> (2) Noise-limited service contour maps (for full-power digital stations) or protected contour maps (for Class A and low power television stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;[9]
>
> (3) Available data on shopping and labor patterns in the local market;
>
> (4) Television station programming information derived from station logs or the local edition of the television guide;
>
> (5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings;
>
> (6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records; and
>
> (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.[10]

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[8] 47 U.S.C. § 534(h)(1)(C)(ii)(I)-(V). The legislative history of the provision states that:

> where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.
> * * * *
>
> [This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.

H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992). In adopting rules to implement section 614(h)(1)(C), the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market. *Must Carry Order*, 8 FCC Rcd at 2977, n.139.

[9] Section 76.59(b)(2) contains the following note: "Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit." 47 CFR § 76.59(b)(2).

[10] 47 CFR § 76.59(b). Petitions for special relief to modify television markets that do not include the above evidence may be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.

(continued….)

B. The Petitions

5. Petitioner states that WZME is a full power television station licensed to Bridgeport, Connecticut that has been serving the New York DMA since 1987.[11] Between 1996 and 1997, WZME was subject to numerous market modification decisions that resulted in a substantial number of communities being deleted from its television market in the New York DMA.[12] At the time, the Bureau found that WZME offered no evidence of historical carriage, significant local programming, Grade B coverage, or actual viewership, and noted in some cases a significant distance between the community of license and the communities at issue.[13] Since 2017, WZME has broadcast on a shared channel with Connecticut Public Broadcasting Station WEDW, Stamford, Connecticut, from a tower located in Shelton, Connecticut.[14] However, on February 12, 2023, WZME commenced broadcasting from a "second Distributed Transmission System (DTS) facility at the Empire State Building in New York City" in coordination with WEDW.[15] Petitioner asserts that the DTS now enables WZME to reach most of the New York and New Jersey communities served by Comcast, Spectrum, and Altice, and therefore requests that the Commission add back in to its market the communities not currently included.[16] Because the three Petitions are based upon the same set of facts, evidence, and arguments, they have been consolidated in this order.

III. DISCUSSION

6. After evaluation of the five market modification factors enumerated below, we find support for the addition of the Communities to WZME's market and grant the Petitions in full.

A. Statutory Factors

1. Historical Carriage

7. The first statutory factor that we must consider is "whether the station, or other stations

STELAR Market Mod Order, 30 FCC Rcd at 10424, para. 22. The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if it is in a position to resolve the petition without such evidence. 47 CFR § 1.3; *Tobacco Valley Communications*, Memorandum Opinion and Order, 31 FCC Rcd 8972, 8976 n.22 (MB 2016). Parties may submit whatever additional evidence they deem appropriate and relevant. *Id*.

[11] Comcast Petition at 2; Spectrum Petition at 2; Altice Petition at 2.

[12] *Comcast Cablevision of Monmouth County et al.*, Memorandum Opinion and Order, 11 FCC Rcd 4226 (CSB 1996) (*Comcast Cablevision*); *Clear Cablevision Inc. and Manchester Cablevision Inc., both d/b/a Adelphia Cable Communications*, Memorandum Opinion and Order, 11 FCC Rcd 22282 (CSB 1996) (*Clear Cablevision*); *TKR Cable Company*, Memorandum Opinion and Order, 12 FCC Rcd 3525 (CSB 1997) (*TKR*); *Home Link Communications of Princeton, L.P. and ComVideo Systems, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 1578 (CSB 1997) (*Home Link*); *Time Warner Entertainment-Advance/Newhouse Partnership*, 11 FCC Rcd 6541 (CSB 1996) (*Time Warner*); *Time Warner New York City Cable Group*, Memorandum Opinion and Order, 12 FCC Rcd 13094 (CSB 1996) (*Time Warner New York City*); *Time Warner Cable and Paragon Cable of Mount Vernon*, Memorandum Opinion and Order, 12 FCC Rcd 12112 (CSB 1997) (*Time Warner Cable*); *Cablevision Systems Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 6453 (CSB 1996) (*Cablevision Systems*); *Continental Cablevision of Western New England, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 6488 (CSB 1996) (*Continental Cablevision*); *TKR Cable Company*, Memorandum Opinion and Order, 11 FCC Rcd 17121 (CSB 1996) (*TKR II*); *TCI of Northern New Jersey, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 891 (CSB 1997) (*TCI of Northern New Jersey*); *TKR Cable Company*, Memorandum Opinion and Order, 12 FCC Rcd 3525 (CSB 1997) (*TKR III*); *U.S. Cablevision Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 21144 (CSB 1997) (*US Cablevision*).

[13] *Id*.

[14] Comcast Petition at 4; Spectrum Petition at 4; Altice Petition at 4.

[15] *Id*.

[16] *Id*.

located in the same area, have been historically carried on the cable system or systems within such community."[17] When analyzing a station's historic carriage, consideration is given not only to carriage by the operator that is the subject of the request, but also to whether the station is carried by competitors in the relevant communities.[18] The Bureau has explained that "such carriage is evidence of a petitioner station's nexus with a community" and that "'[e]ven when a station has no history of carriage in a community, the Commission [gives] weight to this factor when another station based in the same area has been carried in the community.'"[19]

8. Petitioner asserts that four other stations, WABC-TV, WPIX, WFUT-DT, and WXTV-DT (co-located stations) are currently broadcasting from the same site at the Empire State Building and are carried on the Comcast, Spectrum, and Altice cable systems in the Communities.[20] Because these co-located stations are carried on the respective cable systems, Petitioner argues that WZME would be placed at a competitive disadvantage if it is not carried on the Comcast, Spectrum, and Altice systems in these Communities.[21] Petitioner further asserts that WZME has been carried by other MVPDs (Verizon FiOS, DISH, and DIRECTV) in the New York DMA.[22] In sum, Petitioner contends that the installation of the DTS system at the Empire State Building, carriage by MVPDs in the relevant communities of the other co-located stations broadcasting from the Empire State Building, and the history of carriage of WMZE by other MVPDs within and adjacent to these communities weigh in its favor.[23]

9. We find that the first statutory factor weighs in favor of the requested modification. With regard to this statutory factor, the Petitioner has demonstrated that WZME has been carried by other MVPDs within and immediately adjacent to the Communities, and carriage of the station by other MVPDs in the relevant communities has been viewed by the Bureau as weighing in support of this factor.[24] In this regard, we place particular emphasis on WZME's carriage in the communities by Verizon FiOS and, consistent with our precedent, accord lesser, but still positive, relevance to the DMA-wide carriage of WZME by DISH and DIRECTV.[25] WZME's Petition is further bolstered by evidence that Comcast, Spectrum, and Altice carry co-located stations in the relevant communities.[26] Our precedent

[17] 47 U.S.C. § 534(h)(1)(C)(ii)(I).

[18] *Petition for Modification of Philadelphia, PA Designated Market Area with Regard to Station WACP, Atlantic City, NJ*, Memorandum Opinion and Order, 29 FCC Rcd 1835, 1845, para. 19, n.77 (MB 2014).

[19] *Entravision Holdings, LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, Maryland*, Memorandum Opinion and Order, 33 FCC Rcd 2215, 2225, para. 15 (MB 2018) (*Entravision Order*) (quoting *Woods Communications Corporation*, Memorandum Opinion and Order, 32 FCC Rcd 6597, 6600, para. 6 (MB 2017) (citing *Tennessee Broadcasting Partners*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3934, para. 10 (MB 2008) (finding that carriage of a competing station in the same community provides evidence to support market modification)).

[20] Comcast Petition at 13; Spectrum Petition at 12-13; Altice Petition at 14-15.

[21] Comcast Petition 13-14; Spectrum Petition at 13; Altice Petition at 15.

[22] Comcast Petition at 14; Spectrum Petition at 13; Altice Petition at 15.

[23] *Id.*

[24] *Entravision Order*, 33 FCC Rcd at 2225, para. 15.

[25] There is not enough information to determine how long WZME has been carried by these MVPDs. The Bureau has previously held that "DMA-wide DBS carriage is of limited relevance." *See One Ministries, Inc. Petition for Modification of the Television Market for Station KQSL, Fort Bragg, California*, Memorandum Opinion and Order, 36 FCC Rcd 12391, para. 15 (MB 2021).

[26] *WRNN-Spectrum Order*, 34 FCC Rcd 6451, para. 10; *WRNN-Altice Order*, 35 FCC Rcd at 7, para. 12. *See also Entravision Order*, 33 FCC Rcd 2225, para. 15; *Woods Communications Corporation*, Memorandum Opinion and Order, 32 FCC Rcd 6597, 6600, para. 6 (MB 2017) (citing *Tennessee Broadcasting Partners*, Memorandum

(continued….)

recognizes that the carriage of other co-located stations by MVPDs should weigh in favor of satisfying this market modification factor.[27]

2. Local Service

10. Second, we consider "whether the television station provides coverage or other local service to such community."[28] This statutory factor can be satisfied by demonstrating the Station's signal coverage, its geographic proximity to the Communities, its shopping and labor patterns between the Station's community of license and the Communities, as well as locally-focused programming broadcast by the Station. Less significance, however, may be accorded to locally-focused programming when these other factors evidence a sufficient nexus to the Communities.[29]

11. The Petitioner asserts that WZME's signal contour supports the inclusion of the Communities in the Station's market because the previously deleted Communities are now within WMZE's noise-limited service contour and the Station is geographically proximate to them.[30] The Petitioner credits WZME's change in circumstances to its installation of the DTS facility on the Empire State Building in New York City in February 2023, which has resulted in the substantial expansion of WMZE's signal coverage in the DMA to include many of the Communities that were deleted from its market pursuant to the previously issued Bureau modification orders.[31] Because the new DTS facility in New York City is closer to the Communities than its community of license, Petitioner asserts that WMZE's DTS signal currently covers all of the subject communities relevant to these Petitions.[32]

12. Petitioner observes that the Bureau has issued a prior decision regarding the installation of a new DTS facility that it believes is relevant precedent. Specifically, the Petitioner cites the 2015 market modification decision involving KAZN-TV, Licensee, LLC (KAZN Licensee), in which certain communities were added to television station KILM's market.[33] KILM-TV, like WMZE, was previously the subject of a Bureau order that had resulted in the deletion of communities from its television market because it failed to provide a Grade B service contour over the communities, and the distance between the Station's community of license and the communities it sought to reach with its signal coverage was substantial.[34] However, in 2014, KAZN-TV Licensee constructed a three-site DTS transmission facility, which resulted in the station providing a noise-limited service level over the communities that were the subject of the prior market modification.[35] Based on these changed circumstances, KAZN Licensee

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Opinion and Order, 23 FCC Rcd 3928, 3934, para. 10 (MB 2008) (finding that carriage of a competing station in the same community provides evidence to support market modification)).

[27] *See Entravision Order,* 33 FCC Rcd at 2225, para. 15 ("Because Comcast and Cox carry WUSA, along with every other full-power television station in the area, we believe that WJAL would be at a competitive disadvantage if these cable operators did not carry WJAL in the Communities."); *WRNN-Spectrum Order*, 34 FCC Rcd 6452, para. 12 ("Because Spectrum is carrying WRNN's channel sharing partner on its Bergen County system . . . [and] since Spectrum also carries other co-located and nearby stations, we believe that WRNN would be at a competitive disadvantage if Spectrum did not carry WRNN in the Communities"). *See also WRNN-Altice Order*, 35 FCC Rcd at 8, para. 15.

[28] 47 U.S.C. § 534(h)(1)(C)(ii)(II)

[29] *See WRNN-Spectrum Order*, 34 FCC Rcd at 6454-55, para. 18.

[30] Comcast Petition at 15; Spectrum Petition at 14; Altice Petition at 16-17.

[31] Comcast Petition at 4; Spectrum Petition at 4; Altice Petition at 4-5.

[32] *Id*.

[33] Comcast Petition at 10; Spectrum Petition at 9-10; Altice Petition at 11-12.

[34] *Id*.

[35] *Id*.

sought to add back certain communities in the Los Angeles DMA served by all cable operators to KILM's market as a result of the earlier market modification petitions filed by cable operators.[36] In granting KAZN-TV Licensee's petition, the Bureau found a history of carriage in the communities and surrounding communities and that KILM had demonstrated that the station now provides signal coverage to all of the communities.[37]

13. In addition, the Petitioner cites a more recent Bureau order that granted the market modification petitions of stations based upon a change in circumstances arising out of channel sharing agreements that were entered into pursuant to the Commission's Broadcast Incentive Auction.[38] The Petitioner asserts that the Bureau granted orders for petitions filed in 2019 and 2020 by WRNN License Company, LLC to add to WRNN-TV's must-carry market many of the same communities in the New York DMA that the Petitioner seeks to add, while noting that some of the WZME and WRNN markets were modified to exclude them in the same order.[39] Pursuant to the Broadcast Incentive Auction, WRNN entered into a sharing arrangement with WWOR-TV, Secaucus, NJ and began broadcasting from facilities at One World Trade Center in New York City, rather than its previous site in Woodstock, New York, which put its transmitter significantly closer to each of the communities at issue. WRNN thereby placed a noise-limited contour over all the relevant communities,[40] and the Bureau granted WRNN-TV's petition. WZME believes this decision supports granting its Petitions.[41]

14. Petitioner also contends that its noise-limited service contour is "equivalent to the contours for the other stations co-located at the Empire State Building[,] each of which have broad carriage within the DMA" on each of the cable systems.[42] The Petitioner has submitted maps showing WZME's current signal contour in relation to the Communities and the relevant headends for the cable systems serving the Communities.[43]

15. The Petitioner further asserts that WZME is now geographically proximate to the Communities and that the current distance is "significantly smaller than the distance between WZME's transmitter and the communities at the time of the previous market modifications" because of the addition of the transmitter at the Empire State Building.[44] However, the Petitioner acknowledges that the distance between the communities at issue and WZME's community of licensee, Bridgeport, Connecticut remains the same.[45]

16. Additionally, the Petitioner addresses shopping and labor patterns and maintains that WZME's community of license shares strong economic connections with the Communities.[46] The

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[36] *Id*.

[37] *Id*.

[38] Comcast Petition at 11; Spectrum Petition at 10; Altice Petition at 12.

[39] Comcast Petition at 11-12; Spectrum Petition at 11; Altice Petition at 12-13.

[40] Comcast Petition at 12; Spectrum Petition at 11; Altice Petition at 13.

[41] Comcast Petition at 12; Spectrum Petition at 11-12; Altice Petition at 13.

[42] Comcast Petition at 15-16; Spectrum Petition at 14-15; Altice Petition at 17.

[43] Comcast Petition at 17, Exhibit E (As the crow flies distances); Spectrum Petition 15, Exhibit E (As the crow flies distances); Altice Petition at 17-18, Exhibit E (As the crow flies distances). Exhibit E shows the distance between the WZME transmitter at the Empire State Building/Bridgeport, Connecticut, and communities served by Comcast, Spectrum, and Altice in the NY DMA that "appear to have never been affirmatively excluded from WZME's market." *See* Comcast Petition at 17, n.44; Spectrum Petition at 15, n.40; Altice Petition at 17, n.50.

[44] Comcast Petition at 16; Spectrum Petition at 15; Altice Petition at 17.

[45] Comcast Petition at 18; Spectrum Petition at 16; Altice Petition at 19.

[46] Comcast Petition at 18; Spectrum Petition at 17; Altice Petition at 19.

Petitioner states that Bridgeport is Connecticut's largest city and home to multiple event and performance venues, such as the Hartford Healthcare Amphitheater, Total Mortgage Arena, Stress Factory Comedy Club, Downtown Cabaret Theater, and the Klein Memorial Auditorium, which hosts musical performances, sporting events, and live entertainment that attract audiences from around the region.[47] In addition, according to Petitioner, Bridgeport has museums and tourist attractions, such as the Sacred Heart University's Discovery Science Center and Planetarium, Museum of Art, the Captain's Cove Seaport Marina, Beardsley's Zoo, and Barnum Museum,[48] and Bridgeport also hosts an annual Bridgeport Art Trail event, which is a weekend-long celebration of local art, artists, and crafters.[49] Furthermore, the Petitioner notes that Bridgeport is on several highways that provide direct access to New York City, including, I-95, US-1, and the Merritt Parkway.[50] The Petitioner also asserts that Bridgeport has a "stop on the Metro-North Railroad's New Haven Line, which provides daily service between Grand Central Station in Manhattan and Bridgeport, Connecticut, extending on to New Haven."[51] Petitioner also states that Amtrak's Northeast Regional and Vermonter lines provides daily service between Bridgeport and New York City and that the Northeast Regional line has service that continues on to New Jersey's Metropark Station.[52] Finally, Petitioner states that Bridgeport serves as a port for the Bridgeport and Port Jefferson Ferry, which is one of two ferries that provides "daily service between Connecticut and Long Island, New York across the Long Island Sound."[53]

17. Furthermore, the Petitioner asserts that in addition to travel and tourism, labor patterns also closely connect Bridgeport to the Communities.[54] Petitioner states that a September 2019 New York City Department of City Planning Report found that "eight percent of the employed residents of Fairfield County, Connecticut – where Bridgeport is located – are employed in New York City and, it contends that this thereby "demonstrates that a significant percentage of residents" in the Communities are employed in New York City.[55] Consequently, WZME argues that there appears to be a "substantial economic interconnectedness between Bridgeport, Connecticut and the communities that are the subject of the Petitions."[56]

18. With regard to local programming, the Petitioner asserts that the Bureau has assigned less weight to this statutory factor when "the other aspects—i.e., signal coverage, geographic proximity, and shopping and labor patterns—support a finding of local coverage and service."[57] The Petitioner states that it is affiliated with the Story network, which airs historical and current events programming that appeals to a wide variety of viewers.[58] In addition, WZME airs two weekly local programs: the Suki and Scott Show, which features segments on area non-profits and community issues such as cultural and entertainment events in the Tri-State area; and Job Hunt New York, which provides viewers with

[47] *Id*.

[48] Comcast Petition at 19; Spectrum Petition at 17-18; Altice Petition at 20.

[49] Comcast Petition at 19; Spectrum Petition at 18; Altice Petition at 20.

[50] *Id*.

[51] *Id*.

[52] Comcast Petition at 19-20; Spectrum Petition at 18; Altice Petition at 20-21.

[53] Comcast Petition at 20; Spectrum Petition at 18; Altice Petition at 21.

[54] Comcast Petition at 20-21; Spectrum Petition at 19; Altice Petition 21-22.

[55] Comcast Petition at 20; Spectrum Petition at 18-19; Altice Petition at 21.

[56] Comcast Petition at 19-20; Spectrum Petition at 19; Altice Petition at 21.

[57] Comcast Petition at 20; Spectrum Petition at 19; Altice Petition at 21-22.

[58] Comcast Petition at 20-21; Spectrum Petition at 19-20; Altice Petition at 22.

information on local career and job training opportunities.[59]

19. We find that the second statutory factor weighs in favor of WZME's Petitions. As WZME concedes, the location of a DTS transmitter has no bearing on determining a station's proximity to a community.[60] Further we find that WZME offers little locally-relevant programming aimed at the Communities. However, the Petitioner has presented substantial evidence regarding WZME's signal coverage of, and shopping and labor patterns in relation to, the Communities. We find that this substantial evidence demonstrates that the second statutory factor weighs in favor of the requested modifications.

3. Promoting Consumer Access to Local Stations

20. The third statutory factor we consider is "whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State or residence."[61] This factor is intended to ensure that MVPD subscribers are "receiving news, politics, sports, emergency information, and other television programming relevant to their home state" and is licensed to a community within the same state as the new community.[62] A petitioner is considered to satisfy this factor if the involved station is licensed to a community within the same state as the new community.[63] This factor may be given increased weight if the station provides programming specifically related to subscribers' state of residence, and may be given even more weight if subscribers in the existing market have little or no access to such in-state programming.[64] However, this new in-state factor was not intended to bar a market modification because it did not result in increased consumer access to an in-state station's programming.[65] In such cases, the Commission determined that the "in-state factor would be inapplicable and the modification request would be evaluated based on the other statutory factors.[66]

21. We assign no weight to this factor with regard to the Communities. WZME is licensed to Bridgeport, Connecticut and broadcasts from a transmitter located in Shelton, Connecticut and a DTS transmitter located on top of the Empire State Building in New York City, whereas the Communities are solely located in New York and New Jersey. Thus, the in-state factor does not apply.

4. Carriage of Other Eligible Stations

22. Fourth, we consider "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."[67] In general, this factor is interpreted as enhancing a station's market modification petition if other stations do not sufficiently serve the communities at issue; however,

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[59] *Id*.

[60] *See One Ministries, Inc. Petition for Modification of the Television Market for Station KQSL, Fort Bragg, California*, Memorandum Opinion and Order, 2023 WL 3433758, at para. 25 (MB Apr. 28, 2023) (One Ministries 2023).

[61] 47 U.S.C. § 534(h)(1)(C)(ii)(III).

[62] *STELAR Market Mod. Order*, 30 FCC Rcd at 10407, para. 1, 10420, para. 18 (citing Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322, at 11 (2014)).

[63] *Id*. at 10420, para. 18.

[64] *Id*.

[65] *Id*. at 10421, para. 19.

[66] *Id*.

[67] 47 U.S.C. § 534(h)(1)(C)(ii)(IV).

other stations' service to the communities rarely has counted against a petition.[68] The Petitioner states that "[u]pon information and belief," the Comcast, Spectrum, and Altice cable systems serving the "New York DMA carry other local television stations that provide coverage of news, sports, and other issues of local interest."[69] Accordingly, consistent with our precedent, we assign no weight to this factor.

5. **Viewing Patterns**

23. The fifth statutory factor focuses on "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."[70] The Petitioner states that the Bureau has "given 'this factor limited weight in similar circumstances where the petitioning station's market was previously modified to exclude the relevant communities,'" and "has also considered improved signal coverage to be a mitigating factor with respect to a lack of viewership in the communities."[71] The Petitioner argues that the Bureau "should discount this factor in its analysis."[72] However, the Petitioner notes that "published audience data from Nielsen does in fact show that WZME has actual viewers in the DMA."[73] Petitioner therefore argues that "to the extent that the Bureau assigns this factor any weight, it should weigh in favor of the requested modification.[74]

24. Petitioner has provided data indicating WZME has minimal viewership throughout the New York DMA. Our precedent requires a "significant" level of viewership in the specific communities at issue in order to give this factor positive weight.[75] WZME correctly asserts that the Bureau has given this factor limited weight in situations similar to those presented by this Petition, and we do so here. This does not obviate the fact that WZME has demonstrated extremely small viewership in the Communities. In the absence of a demonstration of significant viewing in the Communities, we are compelled to find that this factor weighs slightly against grant of the petition.

6. **Conclusion**

25. We conclude that the facts support the grant of the Petitioner's request to modify the market of WZME, Bridgeport, Connecticut, to include all of the Communities identified in the Petitions and served by the Comcast, Spectrum, and/or Altice cable systems. We find that the first and second, statutory factors weigh in favor of the market modification request. We find that the fifth factor weighs slightly against the petition, and assign no weight to the third and fourth factors. Further, because Comcast, Spectrum, and Altice are carrying other full power stations broadcasting from the Empire State Building on its systems in the Communities, we agree with that WZME that it would be at a competitive disadvantage to those stations absent grant of its Petition. On balance, upon consideration of all the statutory and non-statutory factors raised by Petitioner, and for the reasons discussed herein, we grant the Petitions.

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[68] *See Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013). *See also Tennessee Broadcasting Partners*, 23 FCC Rcd at 3947, para. 49.

[69] Comcast Petition at 23; Spectrum Petition at 21; Altice Petition at 23-24.

[70] 47 U.S.C. § 534(h)(1)(C)(ii)(V).

[71] Comcast Petition at 23; Spectrum Petition at 22; Altice Petition at 24.

[72] Comcast Petition at 23; Spectrum Petition at 22; Altice Petition at 25.

[73] Comcast Petition at 23-24, Exhibit H; Spectrum Petition at 22, Exhibit H; Altice Petition at 25, Exhibit H.

[74] Comcast Petition at 24; Spectrum Petition at 22; Altice Petition at 25.

[75] *KVMD Licensee Company, LLC Petition for Modification of the Television Market of Station KVMD(TV), Twentynine Palms*, California, 36 FCC Rcd 2349, 2355, para 13 (MB 2020); One Ministries 2023, 2023 WL 3433758, at para 37 (rejecting Petitioner's limited audience data provided through a Nielsen Media Research trial subscription that indicated insignificant viewership).

IV. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED**, pursuant to section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned Petitions for Special Relief (MB Docket No. 23-56, CSR 9007-A; MB Docket No. 23-57, CSR 9008-A; MB Docket No. 23-58, CSR 9009-A) filed by TV-49, Inc. **ARE GRANTED**.

27. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.[76]

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

[76] 47 CFR § 0.283.

Exhibit A

WZME List of Communities for Market Modification

Communities listed in **bold typeface** are those identified in previous market modifications as affirmatively excluded from WZME's must carry market.

MB Docket No. 23-56
CSR 9007-A
Comcast Petition

PSID 000006 – Comcast of Long Beach Island LLC

CUID	County	Community Name	Legal Name
NJ0016	**Ocean**	**Beach Haven**	**Comcast of Long Beach Island LLC**
NJ0017	**Ocean**	**Harvey Cedars**	**Comcast of Long Beach Island LLC**
NJ0018	**Ocean**	**Long Beach**	**Comcast of Long Beach Island LLC**
NJ0019	**Ocean**	**Ship Bottom**	**Comcast of Long Beach Island LLC**
NJ0020	**Ocean**	**Surf City**	**Comcast of Long Beach Island LLC**
NJ0182	**Ocean**	**Barnegat Light**	**Comcast of Long Beach Island LLC**

PSID 000205 – Comcast of Northwest New Jersey LLC

CUID	County	Community Name	Legal Name
NJ0009	**Warren**	**Hackettstown**	**Comcast of Northwest New Jersey LLC**
NJ0011	**Warren**	**Mansfield**	**Comcast of Northwest New Jersey LLC**
NJ0012	**Morris**	**Mount Olive**	**Comcast of Northwest New Jersey LLC**
NJ0039	**Hunterdon**	**Glen Gardner**	**Comcast of Northwest New Jersey LLC**
NJ0040	**Hunterdon**	**Hampton**	**Comcast of Northwest New Jersey LLC**
NJ0041	**Hunterdon**	**Lebanon**	**Comcast of Northwest New Jersey LLC**
NJ0042	**Warren**	**Washington**	**Comcast of Northwest New Jersey LLC**

NJ0043	**Warren**	**Washington**	**Comcast of Northwest New Jersey LLC**
NJ0078	**Hunterdon**	**High Bridge**	**Comcast of Northwest New Jersey LLC**
NJ0079	**Warren**	**Franklin**	**Comcast of Northwest New Jersey LLC**
NJ0080	**Morris**	**Washington**	**Comcast of Northwest New Jersey LLC**
NJ0115	**Warren**	**Belvidere**	**Comcast of Northwest New Jersey LLC**
NJ0116	**Warren**	**Oxford**	**Comcast of Northwest New Jersey LLC**
NJ0240	**Warren**	**White**	**Comcast of Northwest New Jersey LLC**
NJ0314	**Warren**	**Independence**	**Comcast of Northwest New Jersey LLC**
NJ0502	**Warren**	**Liberty**	**Comcast of Northwest New Jersey LLC**
NJ0555	**Hunterdon**	**Califon**	**Comcast of Northwest New Jersey LLC**

PSID 000552 – Comcast of the Meadowlands LLC

CUID	County	Community Name	Legal Name
NJ0294	**Bergen**	**Rutherford**	**Comcast of the Meadowlands LLC**
NJ0295	**Bergen**	**East Rutherford**	**Comcast of the Meadowlands LLC**
NJ0296	**Bergen**	**Carlstadt**	**Comcast of the Meadowlands LLC**
NJ0297	**Bergen**	**Lyndhurst**	**Comcast of the Meadowlands LLC**
NJ0298	**Bergen**	**North Arlington**	**Comcast of the Meadowlands LLC**
NJ0299	**Hudson**	**Kearny**	**Comcast of the Meadowlands LLC**
NJ0300	**Hudson**	**East Newark**	**Comcast of the Meadowlands LLC**
NJ0382	**Bergen**	**Wallington**	**Comcast of the Meadowlands LLC**

PSID 000816 – Comcast of Monmouth County LLC

CUID	County	Community Name	Legal Name
NJ0132	Monmouth	Eatontown	Comcast of Monmouth County LLC
NJ0155	Monmouth	Monmouth Beach	Comcast of Monmouth County LLC
NJ0156	Monmouth	Sea Bright	Comcast of Monmouth County LLC
NJ0157	Monmouth	West Long Branch	Comcast of Monmouth County LLC
NJ0158	Monmouth	Oceanport	Comcast of Monmouth County LLC
NJ0206	Monmouth	Little Silver	Comcast of Monmouth County LLC
NJ0274	Monmouth	Shrewsbury	Comcast of Monmouth County LLC
NJ0275	Monmouth	Shrewsbury	Comcast of Monmouth County LLC
NJ0362	Monmouth	Middletown	Comcast of Monmouth County LLC
NJ0363	Monmouth	Atlantic Highlands	Comcast of Monmouth County LLC
NJ0405	Monmouth	Hazlet	Comcast of Monmouth County LLC
NJ0433	Monmouth	Red Bank	Comcast of Monmouth County LLC
NJ0434	Monmouth	Tinton Falls	Comcast of Monmouth County LLC
NJ0435	Monmouth	Fair Haven	Comcast of Monmouth County

			LLC
NJ0436	**Monmouth**	**Long Branch**	**Comcast of Monmouth County LLC**
NJ0464	**Monmouth**	**Highlands**	**Comcast of Monmouth County LLC**
NJ0469	**Monmouth**	**Rumson**	**Comcast of Monmouth County LLC**
NJ0470	**Monmouth**	**Allenhurst**	**Comcast of Monmouth County LLC**
NJ0471	**Monmouth**	**Deal**	**Comcast of Monmouth County LLC**
NJ0472	**Monmouth**	**Fort Monmouth**	**Comcast of Monmouth County LLC**
NJ0473	**Monmouth**	**Loch Arbour**	**Comcast of Monmouth County LLC**
NJ0474	**Monmouth**	**Freehold**	**Comcast of Monmouth County LLC**
NJ0487	**Monmouth**	**Holmdel**	**Comcast of Monmouth County LLC**

PSID 002019 – Comcast of New Jersey II LLC

NJ0162	**Essex**	**Livingston**	**Comcast of New Jersey II LLC**
NJ0163	**Essex**	**West Caldwell**	**Comcast of New Jersey II LLC**
NJ0164	**Essex**	**Irvington**	**Comcast of New Jersey II LLC**
NJ0165	Essex	West Orange	Comcast of New Jersey II LLC
NJ0186	**Essex**	**Fairfield**	**Comcast of New Jersey II LLC**
NJ0187	**Essex**	**Verona**	**Comcast of New Jersey II LLC**

NJ0188	Essex	Maplewood	Comcast of New Jersey II LLC
NJ0189	Hudson	Harrison	Comcast of New Jersey II LLC
NJ0193	Essex	Caldwell	Comcast of New Jersey II LLC
NJ0194	Essex	Roseland	Comcast of New Jersey II LLC
NJ0202	Essex	Orange	Comcast of New Jersey II LLC
NJ0220	Essex	Belleville	Comcast of New Jersey II LLC
NJ0221	Essex	Bloomfield	Comcast of New Jersey II LLC
NJ0222	Union	Union	Comcast of New Jersey II LLC
NJ0223	Union	Hillside	Comcast of New Jersey II LLC
NJ0225	Essex	Essex Fells	Comcast of New Jersey II LLC
NJ0246	Essex	Millburn	Comcast of New Jersey II LLC
NJ0247	Union	Roselle Park	Comcast of New Jersey II LLC
NJ0248	Union	Roselle	Comcast of New Jersey II LLC
NJ0249	Union	Westfield	Comcast of New Jersey II LLC
NJ0250	Union	Linden	Comcast of New Jersey II LLC
NJ0261	Union	Summit	Comcast of New Jersey II LLC
NJ0272	Union	Springfield	Comcast of New Jersey II LLC
NJ0273	Essex	Montclair	Comcast of New Jersey II LLC
NJ0323	Union	Berkeley Heights	Comcast of New Jersey II LLC
NJ0324	Union	New Providence	Comcast of New Jersey II LLC
NJ0325	Hudson	Secaucus	Comcast of New

			Jersey II LLC
NJ0329	**Middlesex**	**Woodbridge**	**Comcast of New Jersey II LLC**
NJ0350	**Middlesex**	**Perth Amboy**	**Comcast of New Jersey II LLC**
NJ0351	**Union**	**Kenilworth**	**Comcast of New Jersey II LLC**
NJ0352	**Union**	**Scotch Plains**	**Comcast of New Jersey II LLC**
NJ0353	**Union**	**Clark**	**Comcast of New Jersey II LLC**
NJ0354	**Union**	**Rahway**	**Comcast of New Jersey II LLC**
NJ0358	**Essex**	**East Orange**	**Comcast of New Jersey II LLC**
NJ0360	Union	Cranford	Comcast of New Jersey II LLC
NJ0361	**Union**	**Winfield Park**	**Comcast of New Jersey II LLC**
NJ0369	**Union**	**Fanwood**	**Comcast of New Jersey II LLC**
NJ0378	**Union**	**Garwood**	**Comcast of New Jersey II LLC**
NJ0396	**Union**	**Mountainside**	**Comcast of New Jersey II LLC**
NJ0402	**Middlesex**	**Carteret**	**Comcast of New Jersey II LLC**
NJ0443	**Middlesex**	**South River**	**Comcast of New Jersey II LLC**
NJ0545	**Essex**	**Glen Ridge**	**Comcast of New Jersey II LLC**

PSID 002641 – Comcast of Southeast Pennsylvania, LLC

CUID	**County**	**Community Name**	**Legal Name**
NJ0010	Hunterdon	Lambertville	Comcast of Southeast Pennsylvania Inc
NJ0021	**Middlesex**	**East Brunswick**	**Comcast Cablevision of Central New Jersey Inc**
NJ0344	**Middlesex**	**Plainsboro**	**Comcast Cablevision of Central New Jersey**

			Inc
NJ0372	Middlesex	Monroe	Comcast Cablevision of Central New Jersey Inc
NJ0437	Middlesex	Cranbury	Comcast Cablevision of Central New Jersey Inc
NJ0438	Middlesex	Jamesburg	Comcast Cablevision of Central New Jersey Inc
NJ0439	Middlesex	Helmetta	Comcast Cablevision of Central New Jersey Inc
NJ0440	Middlesex	Spotswood	Comcast Cablevision of Central New Jersey Inc
NJ0441	Middlesex	South Brunswick	Comcast Cablevision of Central New Jersey Inc
NJ0463	Somerset	Hillsborough	Comcast of Central New Jersey II, LLC
NJ0491	Hunterdon	Lebanon	Comcast of Central New Jersey II, LLC
NJ0492	Hunterdon	Clinton	Comcast of Central New Jersey II, LLC
NJ0493	Hunterdon	Readington	Comcast of Central New Jersey II, LLC
NJ0494	Hunterdon	Clinton	Comcast of Central New Jersey II, LLC
NJ0495	Morris	Long Hill	Comcast of Central New Jersey II, LLC
NJ0504	Somerset	Branchburg	Comcast of Central New Jersey II, LLC
NJ0505	Somerset	Bernardsville	Comcast of Central New Jersey II, LLC
NJ0506	Hunterdon	Flemington	Comcast of Central New Jersey II, LLC
NJ0507	Hunterdon	Raritan	Comcast of Central New Jersey II, LLC
NJ0508	Monmouth	Roosevelt	Comcast Cablevision of Central New Jersey Inc

NJ0509	**Morris**	**Chatham**	**Comcast of Central New Jersey II, LLC**
NJ0510	**Somerset**	**Franklin**	**Comcast of Central New Jersey II, LLC**
NJ0546	**Morris**	**Mendham**	**Comcast of Central New Jersey II, LLC**
NJ0547	**Somerset**	**Peapack-Gladstone**	**Comcast of Central New Jersey II, LLC**
NJ0565	**Morris**	**Mendham**	**Comcast of Central New Jersey II, LLC**
NJ0572	**Somerset**	**Bedminster**	**Comcast of Central New Jersey II, LLC**
NJ0573	**Morris**	**Chester**	**Comcast of Central New Jersey II, LLC**
NJ0574	**Morris**	**Chester**	**Comcast of Central New Jersey II, LLC**
NJ0575	**Hunterdon**	**Tewksbury**	**Comcast of Central New Jersey II, LLC**
NJ0576	**Somerset**	**Montgomery**	**Comcast of Central New Jersey II, LLC**
NJ0577	**Somerset**	**Rocky Hill**	**Comcast of Central New Jersey II, LLC**
NJ0583	**Morris**	**Harding**	**Comcast of Central New Jersey II, LLC**
NJ0586	**Hunterdon**	**East Amwell**	**Comcast of Central New Jersey II, LLC**
NJ0591	**Hunterdon**	**Franklin**	**Comcast of Central New Jersey II, LLC**
NJ0592	Hunterdon	Stockton	Comcast of Southeast Pennsylvania Inc
NJ0593	Hunterdon	West Amwell	Comcast of Southeast Pennsylvania Inc
NJ0597	**Hunterdon**	**Union**	**Comcast of Central New Jersey II, LLC**
NJ0601	**Somerset**	**Millstone**	**Comcast of Central New Jersey II, LLC**
NJ0602	**Hunterdon**	**Bethlehem**	**Comcast of Central New Jersey II, LLC**
NJ0607	**Hunterdon**	**Delaware**	**Comcast of Southeast Pennsylvania Inc.**
NJ0611	**Hunterdon**	**Delaware**	**Comcast of Central**

			New Jersey II, LLC
NJ0616	**Somerset**	**Far Hills**	**Comcast of Central New Jersey II, LLC**

PSID 003419 – Comcast of Ocean County LLC

CUID	County	Community Name	Legal Name
NJ0049	**Ocean**	**Bay Head**	**Comcast of Ocean County LLC**
NJ0050	**Ocean**	**Brick Town**	**Comcast of Ocean County LLC**
NJ0051	**Ocean**	**Mantoloking**	**Comcast of Ocean County LLC**
NJ0052	**Ocean**	**Point Pleasant**	**Comcast of Ocean County LLC**
NJ0053	**Ocean**	**Point Pleasant Beach**	**Comcast of Ocean County LLC**

PSID 003685 – Comcast of South Jersey Inc

CUID	County	Community Name	Legal Name
NJ0598	Monmouth	Fairfield	Comcast of South Jersey Inc

PSID 004660 – Comcast of Garden State LP

CUID	County	Community Name	Legal Name
NJ0391	Ocean	Plumstead	Comcast of Garden State LP

PSID 005140 – Comcast of Plainfield LLC

CUID	County	Community Name	Legal Name
NJ0124	**Somerset**	**North Plainfield**	**Comcast of Plainfield LLC**
NJ0126	**Union**	**Plainfield**	**Comcast of Plainfield LLC**
NJ0130	**Middlesex**	**South Plainfield**	**Comcast of Plainfield LLC**

PSID 007304 – Comcast of New Jersey LLC

CUID	County	Community Name	Legal Name

NJ0008	**Ocean**	**Stafford**	**Comcast of New Jersey LLC**
NJ0086	**Ocean**	**Berkeley**	**Comcast of New Jersey LLC**
NJ0090	**Ocean**	**Barnegat**	**Comcast of New Jersey LLC**
NJ0091	**Ocean**	**Beachwood**	**Comcast of New Jersey LLC**
NJ0140	**Ocean**	**Pine Beach**	**Comcast of New Jersey LLC**
NJ0141	**Ocean**	**Ocean Gate**	**Comcast of New Jersey LLC**
NJ0143	**Ocean**	**South Toms River**	**Comcast of New Jersey LLC**
NJ0153	**Ocean**	**Lacey**	**Comcast of New Jersey LLC**
NJ0160	**Ocean**	**Dover**	**Comcast of New Jersey LLC**
NJ0177	**Ocean**	**Eagleswood**	**Comcast of New Jersey LLC**
NJ0178	**Ocean**	**Tuckerton**	**Comcast of New Jersey LLC**
NJ0179	**Ocean**	**Little Egg Harbor**	**Comcast of New Jersey LLC**
NJ0198	**Ocean**	**Island Heights**	**Comcast of New Jersey LLC**
NJ0216	**Ocean**	**Ocean**	**Comcast of New Jersey LLC**
NJ0322	**Ocean**	**Crestwood**	**Comcast of New Jersey LLC**
NJ0499	**Ocean**	**Manchester**	**Comcast of New Jersey LLC**
NJ0500	**Ocean**	**Lakehurst**	**Comcast of New Jersey LLC**
NJ0570	**Ocean**	**Manahawkin**	**Comcast of New Jersey LLC**
NJ0571	**Ocean**	**Pinehurst**	**Comcast of New Jersey LLC**

PSID 009191 – Comcast of New York, LLC

CUID	County	Community Name	Legal Name
NY1028	Putnam	Patterson	Comcast of New York, LLC
NY1054	Dutchess	Pawling	Comcast of New York, LLC
NY1055	Dutchess	Pawling	Comcast of New York, LLC
NY1099	Putnam	Carmel	Comcast of New York, LLC
NY1182	Westchester	Heritage Hills	Comcast of New York, LLC
NY1200	Putnam	Kent	Comcast of New York, LLC
NY1221	Putnam	Southeast	Comcast of New York, LLC
NY1222	Putnam	Brewster	Comcast of New York, LLC
NY1453	Putnam	Putnam Valley	Comcast of New York, LLC
NY1454	Dutchess	Beekman	Comcast of New York, LLC

PSID 011053 – Comcast of Jersey City LLC

CUID	County	Community Name	Legal Name
NJ0558	**Hudson**	**Jersey City**	**Comcast of Jersey City LLC**

MB Docket No. 23-57

CSR 9008-A
Spectrum Petition

PSID 007131 – Spectrum New Jersey, LLC

CUID	County	Community Name	Legal Name
NJ0082	Bergen	Fort Lee	Spectrum New Jersey, LLC
NJ0203	Bergen	Edgewater	Spectrum New Jersey, LLC
NJ0203	Bergen	Ridgefield	Spectrum New Jersey, LLC
NJ0208	Bergen	Englewood Cliffs	Spectrum New Jersey, LLC
NJ0232	Bergen	Cliffside Park	Spectrum New Jersey, LLC
NJ0251	Bergen	Englewood	Spectrum New Jersey, LLC
NJ0252	Bergen	Palisades Park	Spectrum New Jersey, LLC
NJ0253	Bergen	Fairview	Spectrum New Jersey, LLC
NJ0254	Bergen	Ridgefield Park	Spectrum New Jersey, LLC
NJ0338	Hudson	Guttenberg	Spectrum New Jersey, LLC
NJ0339	Bergen	Little Ferry	Spectrum New Jersey, LLC
NJ0427	Bergen	Moonachie	Spectrum New Jersey, LLC
NJ0431	Bergen	Leonia	Spectrum New Jersey, LLC
NJ0484	Bergen	Teterboro	Spectrum New Jersey, LLC

PSID 003599 – Spectrum New York Metro, LLC

CUID	County	Community Name	Legal Name
NY0398	Westchester	Mount Vernon	Spectrum New York Metro, LLC

PSID 005119 – Spectrum New York Metro, LLC

CUID	County	Community Name	Legal Name
NY0104	New York	New York	Spectrum New York Metro, LLC
NY0234	New York	New York	Spectrum New York Metro, LLC

PSID 009040 – Spectrum New York Metro, LLC

CUID	County	Community Name	Legal Name
NY1280	**Kings**	**Brooklyn**	**Spectrum New York Metro, LLC**
NY1281	**Queens**	**Queens**	**Spectrum New York Metro, LLC**

PSID 012237 – Spectrum New York Metro, LLC

CUID	County	Community Name	Legal Name
NY1312	**Richmond**	**Staten Island**	**Spectrum New York Metro, LLC**

PSID 000821 – Spectrum Northeast, LLC

CUID	County	Community Name	Legal Name
NY0161	Sullivan	Jeffersonville	Spectrum Northeast, LLC
NY0163	Ulster	Hurley	Spectrum Northeast, LLC
NY0164	Ulster	Kingston	Spectrum Northeast, LLC
NY0165	Ulster	Esopus	Spectrum Northeast, LLC
NY0166	Ulster	Kingston	Spectrum Northeast, LLC
NY0167	Ulster	Ulster	Spectrum Northeast, LLC
NY0168	Ulster	Woodstock	Spectrum Northeast, LLC
NY0198	Sullivan	Liberty	Spectrum Northeast, LLC
NY0218	Orange	Deerpark	Spectrum Northeast, LLC
NY0219	Orange	Port Jervis	Spectrum Northeast, LLC
NY0220	Dutchess	La Grange	Spectrum Northeast, LLC
NY0221	Dutchess	Pleasant Valley	Spectrum Northeast, LLC
NY0222	Dutchess	Poughkeepsie	Spectrum Northeast, LLC
NY0223	Dutchess	Poughkeepsie	Spectrum Northeast, LLC
NY0225	Sullivan	Rockland	Spectrum Northeast, LLC
NY0243	**Orange**	**Cornwall-on-Hudson**	**Spectrum Northeast, LLC**
NY0244	**Orange**	**Cornwall**	**Spectrum Northeast,**

			LLC
NY0246	**Orange**	**New Windsor**	**Spectrum Northeast, LLC**
NY0247	**Orange**	**Newburgh**	**Spectrum Northeast, LLC**
NY0248	**Orange**	**Newburgh**	**Spectrum Northeast, LLC**
NY0262	Ulster	Saugerties	Spectrum Northeast, LLC
NY0362	Dutchess	Tivoli	Spectrum Northeast, LLC
NY0400	**Ulster**	**Marlborough**	**Spectrum Northeast, LLC**
NY0436	Ulster	Wawarsing	Spectrum Northeast, LLC
NY0437	Ulster	Ellenville	Spectrum Northeast, LLC
NY0438	Ulster	Rochester	Spectrum Northeast, LLC
NY0439	Sullivan	Mamakating	Spectrum Northeast, LLC
NY0440	Sullivan	Woodbridge	Spectrum Northeast, LLC
NY0441	Sullivan	Fallsburg	Spectrum Northeast, LLC
NY0464	Sullivan	Liberty	Spectrum Northeast, LLC
NY0472	Sullivan	Neversink	Spectrum Northeast, LLC
NY0473	Ulster	Olive	Spectrum Northeast, LLC
NY0477	Dutchess	Red Hook	Spectrum Northeast, LLC
NY0478	Dutchess	Red Hook	Spectrum Northeast, LLC
NY0479	Dutchess	Rhinebeck	Spectrum Northeast, LLC
NY0480	Dutchess	Rhinebeck	Spectrum Northeast, LLC
NY0481	Ulster	Saugerties	Spectrum Northeast, LLC
NY0484	Orange	Montgomery	Spectrum Northeast, LLC
NY0488	Sullivan	Delaware	Spectrum Northeast, LLC
NY0492	Orange	Montgomery	Spectrum Northeast, LLC
NY0494	Ulster	Marbletown	Spectrum Northeast, LLC
NY0495	Ulster	Rosendale	Spectrum Northeast,

			LLC
NY0502	Orange	Blooming Grove	Spectrum Northeast, LLC
NY0503	Orange	Washingtonville	Spectrum Northeast, LLC
NY0507	Sullivan	Tusten	Spectrum Northeast, LLC
NY0513	Orange	Walden	Spectrum Northeast, LLC
NY0514	Orange	Crawford	Spectrum Northeast, LLC
NY0515	Ulster	Shawangunk	Spectrum Northeast, LLC
NY0524	Sullivan	Callicoon	Spectrum Northeast, LLC
NY0547	Orange	Maybrook	Spectrum Northeast, LLC
NY0548	Sullivan	Monticello	Spectrum Northeast, LLC
NY0556	Ulster	Shandaken	Spectrum Northeast, LLC
NY0597	Sullivan	Highland	Spectrum Northeast, LLC
NY0600	Ulster	New Paltz	Spectrum Northeast, LLC
NY0601	Ulster	New Paltz	Spectrum Northeast, LLC
NY0621	Sullivan	Bethel	Spectrum Northeast, LLC
NY0628	Sullivan	Thompson	Spectrum Northeast, LLC
NY0717	Orange	Wallkill	Spectrum Northeast, LLC
NY0718	Sullivan	Bloomingburg	Spectrum Northeast, LLC
NY0719	Sullivan	Wurtsboro	Spectrum Northeast, LLC
NY0766	Ulster	Gardiner	Spectrum Northeast, LLC
NY0773	Orange	Highland Falls	Spectrum Northeast, LLC
NY0819	Orange	Highland	Spectrum Northeast, LLC
NY0821	Orange	Middletown	Spectrum Northeast, LLC
NY0845	Orange	Goshen	Spectrum Northeast, LLC
NY0846	Orange	Goshen	Spectrum Northeast, LLC
NY0970	Orange	Wawayanda	Spectrum Northeast,

			LLC
NY1022	Orange	US Military Academy	Spectrum Northeast, LLC
NY1088	Orange	Otisville	Spectrum Northeast, LLC
NY1089	Orange	Mount Hope	Spectrum Northeast, LLC
NY1090	Orange	Hamptonburgh	Spectrum Northeast, LLC
NY1115	Sullivan	Forestburgh	Spectrum Northeast, LLC
NY1290	Ulster	Plattekill	Spectrum Northeast, LLC
NY1291	Ulster	Lloyd	Spectrum Northeast, LLC
NY1324	Sullivan	Fremont	Spectrum Northeast, LLC
NY1377	Sullivan	Lumberland	Spectrum Northeast, LLC
NY1463	Ulster	Denning	Spectrum Northeast, LLC
NY1558	Sullivan	Cochecton	Spectrum Northeast, LLC
NY1648	Orange	Chester	Spectrum Northeast, LLC
NY1989	Ulster	Hardenburgh	Spectrum Northeast, LLC

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PSID 000260 – CSC TKR LLC

CUID	County	Community Name	Legal Name
NJ017	Union	Elizabeth	CSC TKR LLC

PSID 000554 – Cablevision of Monmouth LLC

CUID	County	Community Name	Legal Name
NJ0069	**Monmouth**	**Asbury Park**	**Cable Vision of Monmouth LLC**
NJ0161	**Monmouth**	**Ocean**	**Cable Vision of Monmouth LLC**
NJ0277	**Monmouth**	**Avon-By-The Sea**	**Cable Vision of Monmouth LLC**
NJ0278	**Monmouth**	**Belmar**	**Cable Vision of Monmouth LLC**
NJ0279	**Monmouth**	**Bradley Beach**	**Cable Vision of Monmouth LLC**
NJ0280	**Monmouth**	**Brielle**	**Cable Vision of Monmouth LLC**
NJ0281	**Monmouth**	**Manasquan**	**Cable Vision of Monmouth LLC**
NJ0282	**Monmouth**	**Neptune City**	**Cable Vision of Monmouth LLC**
NJ0283	**Monmouth**	**Neptune**	**Cable Vision of Monmouth LLC**
NJ0284	**Monmouth**	**Sea Girt**	**Cable Vision of Monmouth LLC**
NJ0285	**Monmouth**	**Spring Lake**	**Cable Vision of Monmouth LLC**
NJ0286	**Monmouth**	**South Belmar**	**Cable Vision of Monmouth LLC**
NJ0287	**Monmouth**	**Spring Lake Heights**	**Cable Vision of Monmouth LLC**
NJ0288	**Monmouth**	**Wall**	**Cable Vision of Monmouth LLC**
NJ0456	**Monmouth**	**Interlaken**	**Cable Vision of Monmouth LLC**
NJ0483	**Monmouth**	**Farmingdale**	**Cable Vision of**

			Monmouth LLC

PSID 000862 – Cablevision of Oakland, LLC

CUID	County	Community Name	Legal Name
NJ0033	**Morris**	**Butler**	**Cablevision of Oakland, LLC**
NJ0034	**Bergen**	**Oakland**	**Cablevision of Oakland, LLC**
NJ0035	**Passaic**	**Pompton Lakes**	**Cablevision of Oakland, LLC**
NJ0036	**Passaic**	**Wayne**	**Cablevision of Oakland, LLC**
NJ0075	**Passaic**	**Wanaque**	**Cablevision of Oakland, LLC**
NJ0076	**Passaic**	**Ringwood**	**Cablevision of Oakland, LLC**
NJ0077	**Passaic**	**Bloomingdale**	**Cablevision of Oakland, LLC**
NJ0171	**Morris**	**Kinnelon**	**Cablevision of Oakland, LLC**
NJ0176	**Essex**	**Cedar Grove**	**Cablevision of Oakland, LLC**
NJ0180	**Passaic**	**West Paterson**	**Cablevision of Oakland, LLC**
NJ0181	**Essex**	**North Caldwell**	**Cablevision of Oakland, LLC**
NJ0183	**Passaic**	**Little Falls**	**Cablevision of Oakland, LLC**
NJ0184	**Morris**	**Riverdale**	**Cablevision of Oakland, LLC**
NJ0185	**Morris**	**Lincoln Park**	**Cablevision of Oakland, LLC**
NJ0191	**Morris**	**Pequannock**	**Cablevision of Oakland, LLC**
NJ0195	**Bergen**	**Ridgewood**	**Cablevision of Oakland, LLC**
NJ0196	**Passaic**	**Hawthorne**	**Cablevision of Oakland, LLC**
NJ0197	**Passaic**	**Totowa**	**Cablevision of Oakland, LLC**

NJ0201	**Bergen**	**Bogota**	**Cablevision of Oakland, LLC**
NJ0204	**Bergen**	**Teaneck**	**Cablevision of Oakland, LLC**
NJ0215	**Passaic**	**North Haledon**	**Cablevision of Oakland, LLC**
NJ0219	**Passaic**	**Clifton**	**Cablevision of Oakland, LLC**
NJ0224	**Essex**	**Nutley**	**Cablevision of Oakland, LLC**
NJ0227	**Bergen**	**Glen Rock**	**Cablevision of Oakland, LLC**
NJ0228	**Bergen**	**Hackensack**	**Cablevision of Oakland, LLC**
NJ0244	**Bergen**	**Maywood**	**Cablevision of Oakland, LLC**
NJ0245	**Bergen**	**Garfield**	**Cablevision of Oakland, LLC**
NJ0264	**Bergen**	**River Edge**	**Cablevision of Oakland, LLC**
NJ0265	**Bergen**	**Saddlebrook**	**Cablevision of Oakland, LLC**
NJ0266	**Bergen**	**Westwood**	**Cablevision of Oakland, LLC**
NJ0271	**Bergen**	**Washington**	**Cablevision of Oakland, LLC**
NJ0276	**Bergen**	**South Hackensack**	**Cablevision of Oakland, LLC**
NJ0313	**Bergen**	**Ramsey**	**Cablevision of Oakland, LLC**
NJ0315	**Bergen**	**Rochelle Park**	**Cablevision of Oakland, LLC**
NJ0318	**Passaic**	**Haledon**	**Cablevision of Oakland, LLC**
NJ0326	**Bergen**	**Wood Ridge**	**Cablevision of Oakland, LLC**
NJ0331	**Bergen**	**Hasbrouck Heights**	**Cablevision of Oakland, LLC**
NJ0333	**Passaic**	**Prospect Park**	**Cablevision of Oakland, LLC**
NJ0341	**Bergen**	**Elmwood Park**	**Cablevision of**

			Oakland, LLC
NJ0342	**Bergen**	**Lodi**	**Cablevision of Oakland, LLC**
NJ0349	**Bergen**	**Waldwick**	**Cablevision of Oakland, LLC**
NJ0359	**Passaic**	**Passaic**	**Cablevision of Oakland, LLC**
NJ0403	**Bergen**	**Wyckoff**	**Cablevision of Oakland, LLC**
NJ0406	**Bergen**	**Hohokus**	**Cablevision of Oakland, LLC**
NJ0407	**Morris**	**Montville**	**Cablevision of Oakland, LLC**
NJ0409	**Bergen**	**Allendale**	**Cablevision of Oakland, LLC**
NJ0432	**Bergen**	**Park Ridge**	**Cablevision of Oakland, LLC**
NJ0458	**Bergen**	**Upper Saddle River**	**Cablevision of Oakland, LLC**
NJ0477	**Bergen**	**Midland Park**	**Cablevision of Oakland, LLC**
NJ0529	**Bergen**	**Alpine**	**Cablevision of Oakland, LLC**
NJ0532	**Bergen**	**Franklin Lakes**	**Cablevision of Oakland, LLC**

PSID 000884 – CSC TKR LLC

CUID	County	Community Name	Legal Name
NJ0233	Middlesex	Middlesex	CSC TKR LLC
NJ0234	Somerset	Green Brook	CSC TKR LLC
NJ0235	Somerset	South Bound Brook	CSC TKR LLC
NJ0236	Somerset	Warren	CSC TKR LLC
NJ0237	Middlesex	Dunellen	CSC TKR LLC
NJ0238	Somerset	Bound Brook	CSC TKR LLC
NJ0239	Middlesex	Edison	CSC TKR LLC
NJ0262	Middlesex	Metuchen	CSC TKR LLC
NJ0263	Middlesex	Highland Park	CSC TKR LLC
NJ0289	Middlesex	Piscataway	CSC TKR LLC

NJ0290	Somerset	Manville	CSC TKR LLC
NJ0291	Somerset	Raritan	CSC TKR LLC
NJ0292	Somerset	Somerville	CSC TKR LLC
NJ0330	Somerset	Bridgewater	CSC TKR LLC
NJ0348	Middlesex	New Brunswick	CSC TKR LLC
NJ0364	Middlesex	Sayreville	CSC TKR LLC
NJ0370	Middlesex	South Amboy	CSC TKR LLC
NJ0371	Middlesex	Matawan	CSC TKR LLC
NJ0376	Middlesex	North Brunswick	CSC TKR LLC
NJ0377	Middlesex	Milltown	CSC TKR LLC
NJ0398	Middlesex	Old Bridge	CSC TKR LLC
NJ0399	Monmouth	Keansburg	CSC TKR LLC
NJ0400	Middlesex	Aberdeen	CSC TKR LLC
NJ0401	Monmouth	Union Beach	CSC TKR LLC
NJ0408	Monmouth	Keyport	CSC TKR LLC
NJ0485	Somerset	Watchung	CSC TKR LLC
NJ0486	Somerset	Bernards	CSC TKR LLC
NJ0610	Somerset	The Hills @ Bedmstr	CSC TKR LLC

PSID 000974 – Cablevision of Warwick Inc.

CUID	County	Community Name	Legal Name
NY0422	Suffolk	Islip	Cablevision of Warwick Inc

PSID 001233 – CSC TKR LLC

CUID	County	Community Name	Legal Name
NJ0561	Monmouth	Allentown	CSC TKR LLC

PSID – 001592 – Cablevision of Brookhaven Inc.

CUID	County	Community Name	Legal Name
NY0052	Suffolk	Brookhaven	Cablevision of Brookhaven Inc
NY0363	Suffolk	Patchogue	Cablevision of Brookhaven Inc
NY0451	Suffolk	Lake Grove	Cablevision of

			Brookhaven Inc
NY0581	Suffolk	Bellport	Cablevision of Brookhaven Inc
NY0929	Suffolk	Poquott	Cablevision of Brookhaven Inc

PSID – 001705 – CSC TKR, LLC

CUID	County	Community Name	Legal Name
NJ0013	Sussex	Sussex	CSC TKR, LLC
NJ0056	Sussex	Andover	CSC TKR, LLC
NJ0057	Sussex	Byram	CSC TKR, LLC
NJ0058	Sussex	Franklin	CSC TKR, LLC
NJ0059	Sussex	Hamburg	CSC TKR, LLC
NJ0060	Sussex	Hardyston	CSC TKR, LLC
NJ0061	Sussex	Newton	CSC TKR, LLC
NJ0062	Sussex	Ogdensburg	CSC TKR, LLC
NJ0063	Sussex	Sparta	CSC TKR, LLC
NJ0064	Sussex	Vernon	CSC TKR, LLC
NJ0087	Sussex	Stillwater	CSC TKR, LLC
NJ0088	Sussex	Andover	CSC TKR, LLC
NJ0089	Sussex	Fredon	CSC TKR, LLC
NJ0110	Sussex	Wantage	CSC TKR, LLC
NJ0336	Sussex	Hampton	CSC TKR, LLC
NJ0337	Sussex	Lafayette	CSC TKR, LLC
NJ0453	Sussex	Frankford	CSC TKR, LLC
NJ0488	Sussex	Green	CSC TKR, LLC
NJ0501	Morris	Jefferson	CSC TKR, LLC
NJ0538	Sussex	Branchville	CSC TKR, LLC
NJ0540	Sussex	Sandyston	CSC TKR, LLC
NJ0562	Warren	Blairstown	CSC TKR, LLC
NJ0624	Warren	Knowlton	CSC TKR, LLC
NJ0625	Warren	Hope	CSC TKR, LLC
NJ0626	Warren	Hardwick	CSC TKR, LLC
NJ0627	Warren	Frelinghuysen	CSC TKR, LLC

PSID 001821 – Cablevision of Monmouth LLC

CUID	County	Community Name	Legal Name
NJ0127	**Ocean**	**Seaside Heights**	**Cablevision of Monmouth LLC**
NJ0128	**Ocean**	**Lavallette**	**Cablevision of Monmouth LLC**
NJ0129	**Ocean**	**Seaside Park**	**Cablevision of Monmouth LLC**
NJ0213	**Ocean**	**Dover**	**Cablevision of Monmouth LLC**
NJ0214	**Ocean**	**Berkeley**	**Cablevision of Monmouth LLC**

PSID 001994 – CSC Holdings LLC

CUID	County	Community Name	Legal Name
NY0237	**Suffolk**	**Brookhaven**	**CSC Holdings LLC**
NY0239	**Suffolk**	**Islip**	**CSC Holdings LLC**
NY0242	**Suffolk**	**Smithtown**	**CSC Holdings LLC**
NY0667	**Suffolk**	**Village of Branch**	**CSC Holdings LLC**
NY0690	**Suffolk**	**Brightwaters**	**CSC Holdings LLC**
NY0691	**Suffolk**	**Shoreham**	**CSC Holdings LLC**
NY0713	**Suffolk**	**Port Jefferson**	**CSC Holdings LLC**
NY1403	**Suffolk**	**Belle Terre**	**CSC Holdings LLC**
NY1429	**Suffolk**	**Nissequoge**	**CSC Holdings LLC**
NY1506	**Suffolk**	**Head of the Harbor**	**CSC Holdings LLC**
NY1576	**Suffolk**	**Old Field**	**CSC Holdings LLC**
NY1689	**Suffolk**	**Islandia**	**CSC Holdings LLC**

PSID 00195 – Cablevision of Hudson County LLC

CUID	County	Community Name	Legal Name
NJ0083	Hudson	North Bergen	Cablevision of Hudson County LLC
NJ0111	Hudson	Hoboken	Cablevision of Hudson County LLC
NJ0345	Hudson	Weehawken	Cablevision of Hudson County LLC
NJ0365	Hudson	West New York	Cablevision of Hudson

			County LLC
NJ0366	Hudson	Union	Cablevision of Hudson County LLC

PSID 003146 – Cablevision Systems Long Island Corporation

CUID	County	Community Name	Legal Name
NY0379	**Suffolk**	**Islip**	**Cablevision Systems Islip Corporation**
NY0391	**Suffolk**	**Amityville**	**Cablevision Systems Suffolk Corporation**
NY0392	**Suffolk**	**Huntington**	**Cablevision Systems Huntington Corporation**
NY0399	**Suffolk**	**Babylon**	**Cablevision Systems Suffolk Corporation**
NY0421	**Suffolk**	**Lindenhurst**	**Cablevision Systems Suffolk Corporation**
NY0423	**Suffolk**	**Babylon**	**Cablevision Systems Suffolk Corporation**
NY0453	**Nassau**	**North Hempstead**	**Cablevision Systems Long Island Corporation**
NY0454	**Nassau**	**Hempstead**	**Cablevision Systems Long Island Corporation**
NY0489	**Nassau**	**Oyster Bay**	**Cablevision Systems Long Island Corporation**
NY0611	**Nassau**	**Glen Cove**	**Cablevision Systems Long Island Corporation**
NY0617	**Nassau**	**Farmingdale**	**Cablevision Systems Long Island Corporation**
NY0635	**Nassau**	**Massapequa Park**	**Cablevision Systems Long Island Corporation**
NY0652	**Suffolk**	**Northport**	**Cablevision Systems Huntington Corporation**
NY0653	**Suffolk**	**Huntington Bay**	**Cablevision Systems Huntington**

			Corporation
NY0662	Nassau	Roslyn	Cablevision Systems Long Island Corporation
NY0663	Nassau	Roslyn Estates	Cablevision Systems Long Island Corporation
NY0664	Nassau	Laurel Hollow	Cablevision Systems Long Island Corporation
NY0665	Nassau	Bayville	Cablevision Systems Long Island Corporation
NY0666	Nassau	Mineola	Cablevision Systems Long Island Corporation
NY0703	Nassau	Westbury	Cablevision Systems Long Island Corporation
NY0714	Nassau	Williston Park	Cablevision Systems Long Island Corporation
NY0740	Nassau	Long Beach	Cablevision Systems Long Island Corporation
NY0741	Nassau	Valley Stream	Cablevision Systems Long Island Corporation
NY0748	Nassau	Stewart Manor	Cablevision Systems Long Island Corporation
NY0749	Nassau	Freeport	Cablevision Systems Long Island Corporation
NY0772	Nassau	Hempstead	Cablevision Systems Long Island Corporation
NY0774	Nassau	Floral Park	Cablevision Systems Long Island Corporation
NY0790	Nassau	New Hyde Park	Cablevision Systems Long Island Corporation

NY0791	**Nassau**	**Sea Cliff**	**Cablevision Systems Long Island Corporation**
NY0816	**Nassau**	**Island Park**	**Cablevision Systems Long Island Corporation**
NY0834	**Nassau**	**Manorhaven**	**Cablevision Systems Long Island Corporation**
NY0835	**Nassau**	**Baxter Estates**	**Cablevision Systems Long Island Corporation**
NY0839	**Nassau**	**Bellerose**	**Cablevision Systems Long Island Corporation**
NY0849	**Nassau**	**East Rockaway**	**Cablevision Systems Long Island Corporation**
NY0855	**Nassau**	**Port Washington North**	**Cablevision Systems Long Island Corporation**
NY0920	**Nassau**	**East Williston**	**Cablevision Systems Long Island Corporation**
NY0924	**Nassau**	**Cedarhurst**	**Cablevision Systems Long Island Corporation**
NY0925	**Nassau**	**Garden City**	**Cablevision Systems Long Island Corporation**
NY0932	**Nassau**	**Atlantic Beach**	**Cablevision Systems Long Island Corporation**
NY0933	**Nassau**	**Hewlett Harbor**	**Cablevision Systems Long Island Corporation**
NY0940	**Nassau**	**Lynbrook**	**CSC Acquisition – MA Inc.**
NY0953	**Nassau**	**Rockville Centre**	**Cablevision Systems Long Island Corporation**
NY1009	**Nassau**	**South Floral Park**	**Cablevision Systems Long Island Corporation**

NY1010	Suffolk	Asharoken	Cablevision Systems Huntington Corporation
NY1011	Nassau	Woodsburgh	Cablevision Systems Long Island Corporation
NY1032	Nassau	East Hills	Cablevision Systems Long Island Corporation
NY1033	Nassau	Great Neck	Cablevision Great Neck Corporation
NY1034	Nassau	Great Neck Plaza	Cablevision Great Neck Corporation
NY1035	Nassau	Great Neck Estates	Cablevision Great Neck Corporation
NY1036	Nassau	Kings Point	Cablevision Great Neck Corporation
NY1037	Nassau	Kensington	Cablevision Great Neck Corporation
NY1038	Nassau	Russell Gardens	Cablevision Great Neck Corporation
NY1039	Nassau	Lake Success	Cablevision Great Neck Corporation
NY1040	Nassau	Thomaston	Cablevision Great Neck Corporation
NY1041	Nassau	Saddle Rock	Cablevision Great Neck Corporation
NY1042	Nassau	Plandome	Cablevision Great Neck Corporation
NY1043	Nassau	Plandome Heights	Cablevision Great Neck Corporation
NY1044	Nassau	Plandome Plaza	Cablevision Great Neck Corporation
NY1045	Nassau	Munsey Park	Cablevision Great Neck Corporation
NY1046	Nassau	Flower Hill	Cablevision Great Neck Corporation
NY1047	Nassau	North Hills	Cablevision Great Neck Corporation
NY1053	Nassau	Lawrence	CSC Acquisition – Ma Inc

NY1065	**Nassau**	**Hewlett Neck**	**Cablevision Systems Long Island Corporation**
NY1096	**Nassau**	**Old Westbury**	**Cablevision Systems Long Island Corporation**
NY1132	**Nassau**	**Lattingtown**	**Cablevision Systems Long Island Corporation**
NY1133	**Nassau**	**Muttontown**	**Cablevision Systems Long Island Corporation**
NY1134	**Nassau**	**Oyster Bay Cove**	**Cablevision Systems Long Island Corporation**
NY1135	**Nassau**	**Upper Brookville**	**Cablevision Systems Long Island Corporation**
NY1145	**Nassau**	**Cove Neck**	**Cablevision Systems Long Island Corporation**
NY1146	**Nassau**	**Matinecock**	**Cablevision Systems Long Island Corporation**
NY1185	**Nassau**	**Mill Neck**	**Cablevision Systems Long Island Corporation**
NY1186	**Nassau**	**Malverne**	**Cablevision Systems Long Island Corporation**
NY1187	**Nassau**	**Hewlett Bay Park**	**Cablevision Systems Long Island Corporation**
NY1215	**Nassau**	**Sands Point**	**Cablevision Systems Long Island Corporation**
NY1306	**Suffolk**	**Lloyd Harbor**	**Cablevision Systems Long Island Corporation**
NY1308	**Nassau**	**Old Brookville**	**Cablevision Systems Long Island Corporation**
NY1473	**Nassau**	**Roslyn Harbor**	**Cablevision Systems Long Island**

			Corporation
NY1474	Nassau	Brookville	Cablevision Systems Long Island Corporation
NY1551	Nassau	Centre island	Cablevision Systems Long Island Corporation

PSID 003173 – Cablevision of Rockland/Ramapo, LLC

CUID	County	Community Name	Legal Name
NJ0421	Bergen	Mahwah	Cablevision of Rockland/Ramapo, LLC
NJ0489	Bergen	Montvale	Cablevision of Rockland/Ramapo, LLC
NY0286	Rockland	Haverstraw	Cablevision of Wappingers Falls Inc
NJ0287	Rockland	Haverstraw	Cablevision of Wappingers Falls Inc
NY0290	Rockland	Stony Point	Cablevision of Wappingers Falls Inc
NY0291	Rockland	West Haverstraw	Cablevision of Wappingers Falls Inc
NY0447	Rockland	Spring Valley	Cablevision of Rockland/Ramapo Inc
NY0448	Rockland	Ramapo	Cablevision of Rockland/Ramapo Inc
NY0449	Rockland	Clarkstown	Cablevision of Rockland/Ramapo Inc
NY0794	Rockland	Orangetown	Cablevision of Rockland/Ramapo Inc
NY0842	Rockland	Suffern	Cablevision of Southern Westerchester Inc
NY0869	Rockland	Upper Nyack	Cablevision of Rockland/Ramapo Inc
NY0870	Rockland	South Nyack	Cablevision of Rockland/Ramapo Inc
NY0871	Rockland	Piermont	Cablevision of Rockland/Ramapo Inc

NY0872	**Rockland**	**Nyack**	**Cablevision of Rockland/Ramapo Inc**
NY0873	**Rockland**	**Grandview**	**Cablevision of Rockland/Ramapo Inc**
NY0905	**Rockland**	**Sloatsburg**	**Cablevision of Southern Westerchester Inc**
NY0906	**Orange**	**Tuxedo**	**Cablevision of Southern Westerchester Inc**
NY0938	**Rockland**	**Hillburn**	**Cablevision of Southern Westerchester Inc**
NY0939	**Orange**	**Tuxedo Park**	**Cablevision of Southern Westerchester Inc**
NY0951	**Rockland**	**Pomona**	**Cablevision of Wappingers Falls Inc**
NY1263	**Rockland**	**Wesley Hills**	**Cablevision of Rockland/Ramapo Inc**
NY1424	**Rockland**	**Ramapo**	**Cablevision of Wappingers Falls Inc**
NY1464	**Rockland**	**New Hempstead**	**Cablevision of Rockland/Ramapo Inc**
NY1488	**Rockland**	**Chestnut Ridge**	**Cablevision of Rockland/Ramapo Inc**
NY1601	**Rockland**	**Montebello**	**Cablevision of Rockland/Ramapo Inc**
NY1634	**Rockland**	**Airmont**	**Cablevision of Rockland/Ramapo Inc**
NY1662	**Rockland**	**Ramapo Corridor**	**Cablevision of Rockland/Ramapo Inc**

PSID 003693 – Cablevision of Warwick LLC

CUID	County	Community Name	Legal Name
NJ0190	Sussex	Montague	Cablevision of Warwick LLC
NJ0422	Passaic	West Milford	Cablevision of Warwick LLC
NJ0628	Sussex	Sandyston Township	Cablevision of Warwick LLC

NY0672	Orange	Warwick	Cablevision of Warwick Inc
NY0673	Orange	Greenwood Lake	Cablevision of Warwick Inc
NY0674	Orange	Florida	Cablevision of Warwick Inc
NY0675	Orange	Warwick	Cablevision of Warwick LLC
NY0752	Orange	Chester	Cablevision of Warwick Inc
NY0753	Orange	Chester	Cablevision of Warwick Inc
NY1354	Orange	Unionville	Cablevision of Warwick Inc
NY1355	Orange	Minisink	Cablevision of Warwick Inc
NY1694	Orange	Greenville	Cablevision of Warwick Inc

PSID 003782 – CSC Acquisition-NY Inc.

NY0149	**Suffolk**	**East Hampton**	**Cablevision Systems East Hampton Corporation**
NY0150	**Suffolk**	**Easton Hampton**	**Cablevision Systems East Hampton Corporation**
NY0176	**Suffolk**	**Greenport**	**CSC Acquisition-NY Inc**
NY0183	**Suffolk**	**Quogue**	**CSC Acquisition-NY Inc**
NY0186	**Suffolk**	**Riverhead**	**CSC Acquisition-NY Inc**
NY0187	**Suffolk**	**Sag Harbor**	**CSC Acquisition-NY Inc**
NY0188	**Suffolk**	**Southold**	**CSC Acquisition-NY Inc**
NY0190	**Suffolk**	**Southampton**	**CSC Acquisition-NY Inc**
NY0192	**Suffolk**	**Southampton**	**CSC Acquisition-NY Inc**
NY0197	**Suffolk**	**Westhampton Beach**	**CSC Acquisition-NY**

			Inc
NY0238	**Suffolk**	**Dering Harbor**	**CSC Holdings, Inc**
NY0240	**Suffolk**	**North Haven**	**CSC Holdings, Inc**
NY0241	**Suffolk**	**Shelter Island**	**CSC Holdings, Inc**
NY1728	**Suffolk**	**West Hampton Dunes**	**CSC Acquisition-NY Inc**
NY1819	**Suffolk**	**Sagaponack**	**CSC Acquisition-NY Inc**

PSID 004813 – Cablevision of Wappingers Falls Inc

CUID	County	Community Name	Legal Name
NY0281	Westchester	Buchanan	Cablevision of Wappingers Falls Inc
NY0284	Westchester	Peekskill	Cablevision of Ossining LP
NY0731	Westchester	Mount Pleasant	Cablevision of Wappingers Falls Inc
NY0732	Westchester	New Castle	Cablevision of Wappingers Falls Inc
NY0733	Westchester	Ossining	Cablevision of Ossining LP
NY0734	Westchester	Briarcliff Manor	Cablevision of Wappingers Falls Inc
NY0735	Westchester	Sleepy Hollow	Cablevision of Wappingers Falls Inc
NY0736	Westchester	Ossining	Cablevision of Ossining LP
NY0737	Westchester	Pleasantville	Cablevision of Ossining LP
NY0738	Westchester	Tarrytown	Cablevision of Wappingers Falls Inc
NY0771	Westchester	Cortlandt	Cablevision of Wappingers Falls Inc
NY1086	Westchester	Croton-On-Hudson	Cablevision of Wappingers Falls Inc
NY1208	Putnam	Philipstown	Cablevision of Wappingers Falls Inc
NY1423	Westchester	Bedford	Cablevision of

			Wappingers Falls Inc

PSID 004901 – Cablevision of Southern Westchester, Inc.

CUID	County	Community Name	Legal Name
NY0468	Westchester	Elmsford	Cablevision of Southern Westchester, Inc
NY0700	Westchester	New Rochelle	Cablevision of Southern Westchester, Inc
NY0701	Westchester	Scarsdale	Cablevision of Southern Westchester, Inc
NY0739	Westchester	Eastchester	Cablevision of Southern Westchester, Inc
NY0743	Westchester	Tuckahoe	Cablevision of Southern Westchester, Inc
NY0750	Westchester	Bronxville	Cablevision of Southern Westchester, Inc
NY0792	Westchester	Dobbs Ferry	Cablevision of Southern Westchester, Inc
NY0793	Westchester	Ardsley	Cablevision of Southern Westchester, Inc
NY0803	Westchester	Pelham	Cablevision of Southern Westchester, Inc
NY0804	Westchester	Pelham Manor	Cablevision of Southern Westchester, Inc
NY0805	Westchester	White Plains	Cablevision of Southern Westchester, Inc
NY0814	Westchester	Rye	Cablevision of Southern Westchester, Inc
NY0815	Westchester	Greenburgh	Cablevision of Southern Westchester, Inc

NY0851	Westchester	Irvington	Cablevision of Southern Westchester, Inc
NY0868	Westchester	Hastings-On-Hudson	Cablevision of Southern Westchester, Inc
NY0900	Westchester	Mamaroneck	Cablevision of Southern Westchester, Inc
NY0901	Westchester	Mamaroneck	Cablevision of Southern Westchester, Inc
NY0902	Westchester	Larchmont	Cablevision of Southern Westchester, Inc
NY0982	Westchester	Rye Brook	Cablevision of Southern Westchester, Inc
NY1277	Westchester	North Castle	Cablevision of Southern Westchester, Inc

PSID 005325 – Cablevision of Wappingers Falls Inc

NY0047	**Orange**	**Blooming Grove**	**Cablevision of Wappingers Falls Inc**
NY0048	**Orange**	**Monroe**	**Cablevision of Wappingers Falls Inc**
NY0049	**Orange**	**Woodbury**	**Cablevision of Wappingers Falls Inc**
NY0213	**Dutchess**	**Dover**	**Cablevision Systems Dutchess Corporation**
NY0271	**Dutchess**	**Beacon**	**Cablevision of Wappingers Falls Inc**
NY0272	**Dutchess**	**Fishkill**	**Cablevision of Wappingers Falls Inc**
NY0273	**Dutchess**	**Fishkill**	**Cablevision of Wappingers Falls Inc**
NY0274	**Dutchess**	**Hyde Park**	**Cablevision of Wappingers Falls Inc**
NY0275	**Dutchess**	**East Fishkill**	**Cablevision of Wappingers Falls Inc**
NY0276	**Ulster**	**Lloyd**	**Cablevision of**

			Wappingers Falls Inc
NY0278	Dutchess	Wappingers Falls	Cablevision of Wappingers Falls Inc
NY0305	Orange	Monroe	Cablevision of Wappingers Falls Inc
NY0306	Ulster	Marlborough	Cablevision of Wappingers Falls Inc
NY0307	Ulster	Plattekill	Cablevision of Wappingers Falls Inc
NY0308	Dutchess	Wappinger	Cablevision of Wappingers Falls Inc
NY0309	Dutchess	Poughkeepsie	Cablevision of Wappingers Falls Inc
NY0375	Dutchess	La Grange	Cablevision of Wappingers Falls Inc
NY0657	Dutchess	Amenia	Cablevision Systems Dutchess Corporation
NY0658	Dutchess	Washington	Cablevision Systems Dutchess Corporation
NY0726	Orange	Harriman	Cablevision of Wappingers Falls Inc
NY1116	Putnam	Cold Spring	Cablevision of Wappingers Falls Inc
NY1141	Dutchess	Northeast	Cablevision Systems Dutchess Corporation
NY1142	Dutchess	Millbrook	Cablevision Systems Dutchess Corporation
NY1143	Dutchess	Millerton	Cablevision Systems Dutchess Corporation
NY1209	Putnam	Nelsonville	Cablevision of Wappingers Falls Inc
NY1461	Nassau	Unionvale	Cablevision Systems Dutchess Corporation
NY1462	Ulster	Pine Plains	Cablevision Systems Dutchess Corporation
NY1475	Dutchess	Stanford	Cablevision Systems Dutchess Corporation
NY1676	Dutchess	Clinton	Cablevision Systems Dutchess Corporation
NY1688	Putnam	Philipstown	Cablevision of Wappingers Falls Inc

NY1818	Ulster	Esopus	Cablevision of Wappingers Falls Inc
NY1897	Putnam	Town of Kent	Cablevision of Wappingers Falls Inc
NY1938	Orange	South Blooming Grove	Cablevision of Wappingers Falls Inc
NY1977	Dutchess	Milan	Cablevision of Wappingers Falls Inc

PSID 005968 – Cablevision of New Jersey LLC

CUID	County	Community Name	Legal Name
NJ0381	Hudson	Bayonne	Cablevision of New Jersey LLC

PSID 006557 – CSC TKR LLC

CUID	County	Community Name	Legal Name
NJ0027	Warren	Allamuchy	Cablevision of Paterson LLC
NY0120	Morris	Parsippany-Troy Hill	CSC TKR LLC
NJ0121	Morris	Mountain Lakes	CSC TKR LLC
NY0123	Morris	Mount Olive	CSC TKR LLC
NJ0125	Morris	Morristown	CSC TKR LLC
NY0133	Morris	Dover	CSC TKR LLC
NJ0134	Morris	Mine Hill	CSC TKR LLC
NJ0135	Morris	Rockaway	CSC TKR LLC
NJ0136	Morris	Roxbury	CSC TKR LLC
NJ0137	Sussex	Stanhope	CSC TKR LLC
NJ0138	Morris	Netcong	CSC TKR LLC
NJ0139	Morris	Wharton	CSC TKR LLC
NJ0142	Sussex	Hopatcong	CSC TKR LLC
NJ0147	Morris	Chatham	CSC TKR LLC
NJ0148	Morris	East Hanover	CSC TKR LLC
NJ0149	Morris	Morris Plains	CSC TKR LLC
NJ0150	Morris	Morris	CSC TKR LLC
NJ0151	Morris	Florham Park	CSC TKR LLC
NJ0154	Morris	Victory Gardens	CSC TKR LLC

NJ0159	Morris	Denville	CSC TKR LLC
NJ0167	Morris	Mount Arlington	CSC TKR LLC
NJ0169	Morris	Madison	CSC TKR LLC
NJ0170	Morris	Hanover	CSC TKR LLC
NJ0175	Morris	Rockaway	CSC TKR LLC
NY0242	Morris	Boonton	CSC TKR LLC
NJ0243	Morris	Jefferson	CSC TKR LLC
NJ0270	Morris	Randolph	CSC TKR LLC
NJ0317	Morris	Montville	CSC TKR LLC
NJ0536	Morris	Boonton	CSC TKR LLC
NJ0622	Morris	Picatinny Arsenal	CSC TKR LLC

PSID 007311 – Cablevision of New Jersey LLC

CUID	County	Community Name	Legal Name
NJ0145	Bergen	Bergenfield	Cablevision of New Jersey LLC
NJ0207	Bergen	New Milford	Cablevision of New Jersey LLC
NJ0210	Bergen	Cresskill	Cablevision of New Jersey LLC
NJ0211	Bergen	Dumont	Cablevision of New Jersey LLC
NJ0217	Bergen	Tenafly	Cablevision of New Jersey LLC
NJ0259	Bergen	Fairlawn	Cablevision of New Jersey LLC
NJ0260	Bergen	Oradell	Cablevision of New Jersey LLC
NJ0293	Bergen	Demarest	Cablevision of New Jersey LLC
NJ0311	Bergen	Paramus	Cablevision of New Jersey LLC
NJ0373	Bergen	Hillsdale	Cablevision of New Jersey LLC
NJ0374	Bergen	Closter	Cablevision of New Jersey LLC
NJ0375	Bergen	Emerson	Cablevision of New

			Jersey LLC
NJ0420	**Bergen**	**River Vale**	**Cablevision of New Jersey LLC**
NJ0425	**Bergen**	**Old Tappan**	**Cablevision of New Jersey LLC**
NJ0426	**Bergen**	**Woodcliff Lake**	**Cablevision of New Jersey LLC**
NJ0448	**Bergen**	**Harrington Park**	**Cablevision of New Jersey LLC**
NJ0449	**Bergen**	**Norwood**	**Cablevision of New Jersey LLC**
NJ0450	**Bergen**	**Northvale**	**Cablevision of New Jersey LLC**
NJ0451	**Bergen**	**Haworth**	**Cablevision of New Jersey LLC**
NJ0584	**Bergen**	**Saddle River**	**Cablevision of New Jersey LLC**
NJ0585	**Bergen**	**Rockleigh**	**Cablevision of New Jersey LLC**

PSID 007341- Cablevision Systems Westchester Corporation

CUID	**County**	**Community Name**	**Legal Name**
NY0638	**Westchester**	**Yonkers**	**Cablevision Systems Westchester Corporation**

PSID 008368 – Cablevision Systems Westchester Corp/CSC Holdings Inc

CUID	**County**	**Community Name**	**Legal Name**
NY0426	Westchester	Bedford	Cablevision Systems Westchester Corp
NY0427	Westchester	Mount Kisco	CSC Holdings Inc
NY0942	Westchester	Yorktown	CSC Holdings Inc
NY1056	Westchester	North Castle	CSC Holdings Inc
NY1066	Westchester	Somers	CSC Holdings Inc
NY1083	Putnam	Putnam Valley	Cablevision Systems Westchester Corp
NY1381	Westchester	North Salem	Cablevision Systems Westchester Corp
NY1382	Westchester	Lewisboro	Cablevision Systems

			Westchester Corp
NY1489	Westchester	Pound Ridge	Cablevision Systems Westchester Corp

PSID 008370 – CSC Acquisition – MA Inc

CUID	County	Community Name	Legal Name
NY1092	Westchester	Port Chester	CSC Acquisition – MA Inc
NY1107	Westchester	Harrison	CSC Acquisition – MA Inc

PSID 010957 - Cablevision of Newark

CUID	County	Community Name	Legal Name
NJ0476	**Essex**	**Newark**	**Cablevision of Newark**
NJ0582	**Essex**	**South Orange**	**Cablevision of Newark**

PSID 011794 – Cablevision of Monmouth LLC

CUID	County	Community Name	Legal Name
NJ0346	**Ocean**	**Jackson**	**Cablevision of Monmouth LLC**
NJ0428	**Monmouth**	**Freehold**	**Cablevision of Monmouth LLC**
NJ0429	**Monmouth**	**Englishtown**	**Cablevision of Monmouth LLC**
NJ0430	**Monmouth**	**Manalapan**	**Cablevision of Monmouth LLC**
NJ503	**Ocean**	**Lakewood**	**Cablevision of Monmouth LLC**
NJ0531	**Monmouth**	**Howell**	**Cablevision of Monmouth LLC**
NJ0556	**Monmouth**	**Colts Neck**	**Cablevision of Monmouth LLC**
NJ0557	**Monmouth**	**Marlboro**	**Cablevision of Monmouth LLC**
NJ0617	**Monmouth**	**Millstone**	**Cablevision of Monmouth LLC**
NJ0618	**Monmouth**	**Upper Freehold**	**Cablevision of**

			Monmouth LLC
NJ1021	**Monmouth**	**Earl NWS**	**Cablevision of Monmouth LLC**

PSID 012336 – Cablevision of Paterson LLC

CUID	County	Community Name	Legal Name
NJ0566	Passaic	Paterson	Cablevision of Paterson LLC

PSID 012939 – Cablevision Systems New York City Corporation

CUID	County	Community Name	Legal Name
NY1413	**New York**	**Brooklyn**	**Cablevision Systems New York Corporation**

PSID 013008 - Cablevision Systems of New York City Corporation

CUID	County	Community Name	Legal Name
NY1414	**Bronx**	**Bronx**	**Cablevision Systems New York Corporation**

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-445
Released: May 24, 2023

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THE JULY 17, 2023 DEADLINE TO FILE AN INITIAL REIMBURSEMENT CLAIM

WC Docket No. 18-89

By this Public Notice, the Wireline Competition Bureau (Bureau) reminds recipients in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of the deadline to file at least one reimbursement claim by July 17, 2023.[1]

Federal Communications Commission (Commission) rule 1.50004(g)(1) requires that "[w]ithin one year of the approval of its Reimbursement Program application, a recipient must file at least one reimbursement claim."[2] The Bureau approved all Reimbursement Program applications on July 15, 2022.[3] Because July 15, 2023 falls on a Saturday, the deadline for Reimbursement Program recipients to file at least one reimbursement claim is July 17, 2023.[4] Pursuant to the Commission's rules, failure to meet this deadline "will result in the reclamation of all allocated funding from the Reimbursement Program recipient and revert to the Reimbursement Program fund for potential allocation to other Reimbursement Program participants."[5]

Per Commission rule 1.50004(g), the Bureau will "review and grant or deny" all submitted reimbursement claims.[6] Pursuant to the Secure and Trusted Communications Networks Act, a recipient has one year from the date that the Commission first distributes reimbursement funds to that recipient to

[1] The Secure and Trusted Communications Networks Act of 2019, as amended, defines "recipient" as "any provider of advanced communications service the application of which for a reimbursement under the [Reimbursement] Program has been approved by the Commission, regardless of whether the provider has received reimbursement funds." Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 134 Stat. 158, § 9(11) (2019) (codified as amended at 47 U.S.C. § 1608(11)) (Secure and Trusted Communications Networks Act); *see also* 47 CFR § 1.50001(h) ("The term 'Reimbursement Program recipient' or 'recipient' means an eligible advanced communications service provider that has requested via application and been approved for funding in the Reimbursement Program, regardless of whether the provider has received reimbursement funds.").

[2] 47 CFR § 1.50004(g)(1).

[3] *See Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774 (WCB Jul. 18, 2022).

[4] *See* 47 CFR § 1.4(e)(1), (j) (describing the computation of Commission deadlines that would fall on a holiday, and defining "holiday" to include weekend days).

[5] 47 CFR § 1.50004(g)(1).

[6] 47 CFR § 1.50004(g).

complete the permanent removal, replacement, and disposal of any covered communications equipment or services in its network.[7]

We encourage Reimbursement Program recipients that have not yet submitted at least one reimbursement claim to do so in advance of the July 17, 2023 deadline to familiarize themselves with the submission, review, and approval process. Recipients should also submit any modification request required for the recipient to submit its initial reimbursement claim as soon as possible. For instance, recipients who relied solely on the Catalog of Eligible Expenses and Estimated Costs to submit cost estimates in their applications must first file a modification request to supply a vendor quote before submitting a reimbursement claim for a particular cost.

We expect full, good faith compliance with the Commission's requirements for the reimbursement claim process and with the July 17, 2023 deadline in light of the shared goal of timely removing, replacing, and disposing of covered communications equipment and services in the network.[8] Accordingly, we expect recipients to file materially complete reimbursement claims[9] and timely cooperate with the Bureau and Fund Administrator as we review submissions.[10] Failure to submit at least one reimbursement claim in good faith by July 17, 2023 will result in reclamation of all allocated funding from the Reimbursement Program recipient.[11]

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

-FCC-

[7] 47 U.S.C. § 1603(d)(6)(A); *see also* 47 CFR § 1.50004(h) (implementing this provision of the Secure and Trusted Communications Networks Act).

[8] *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18-89, Second Report and Order, FCC 20-176, 35 FCC Rcd 14284, 14354, para. 170 (2020) (*2020 Supply Chain Order*) (explaining that, in the Secure and Trusted Communications Networks Act, Congress "made clear its intent" to ensure timely removal, replacement, and disposal of covered equipment and services, and consequently establishing the Commission's goal to "ensure the efficient and expeditious use of funding to facilitate network transitions").

[9] Under Commission rule, a reimbursement claim must show "actual expenses reasonably incurred for the removal, replacement, and disposal of covered communications equipment or service." 47 CFR § 1.50004(g). Additional information about the content requirements for reimbursement claims and the submission process is available in the Fund Administrator's FCC Form 5640 Part G and Modifications of Part C User Guide, available at https://www.fcc.gov/sites/default/files/supply-chain-user-guide-09122022.pdf (last visited May 17, 2023).

[10] The Fund Administrator may be required to issue Requests for Information if the information submitted with a modification request or reimbursement claim is insufficient for the Bureau to approve or deny it.

[11] *See* 47 CFR § 1.50004(g)(1); *2020 Supply Chain Order*, 35 FCC Rcd at 14354, para. 170 ("Failure to file for an initial disbursement within one year of receipt of funding allocation approval will result in the automatic reversion of the funding allocation to the program fund for reallocation to other or future program participants.").

PUBLIC NOTICE

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

News media information 202-418-0500
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DA No. 23-446

Report No. TEL-02276 **Thursday May 25, 2023**

International Authorizations Granted

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

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

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

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

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

Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-214-20230414-00049 E Nova Labs, Inc. dba Helium Mobile
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority Date of Action: 05/19/2023

Nova Labs, Inc., dba Helium Mobile (Nova Labs), filed an application for authority to provide resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR §63.18(e)(2).

The following entities hold a 10% or greater direct interest in Nova Labs, a Delaware corporation: (1) Khosla Ventures IV, L.P. (Kholsa Ventures), a Delaware limited partnership (17.89% equity and voting interests) and (2) FirstMark Capital II L.P., Delaware limited partnership (10.58% equity and voting interests). Khosla Ventures Associates IV, LLC (Kholsa Associates), a Delaware limited liability company, is the general partner of Khosla Ventures. VK Services, LLC, a Delaware limited liability company, is the sole manager of Khosla Associates. Vinod Khosla, a U.S. citizen, is the managing member of VK Services, LLC. FirstMark Capital II GP, LLC (FirstMark GP), a Delaware limited liability company, is the general partner of FirstMark Capital II, LP. The managing members of FirstMark GP are Richard Heitzmann and Amish Jain, both U.S. citizens. According to the Applicant, no other individual or entity holds 10% or greater equity or voting interests in Nova Labs.

ITC-ASG-20230425-00053 E Cirion Technologies Solutions, LLC

Assignment

Grant of Authority Date of Action: 05/24/2023

Current Licensee: Cirion Technologies Latin America, LLC

FROM: Cirion Technologies Latin America, LLC

TO: Cirion Technologies Solutions, LLC

On April 25, 2023, Cirion Technologies Solutions, LLC (CTS), filed a notification of the pro forma assignment of international section 214 authorization (ITC-21420210824-00125) from Cirion Technologies Latin America, LLC (CTLA) to CTS, effective March 31, 2023. Prior to the transaction both CTS and CTLA were wholly owned subsidiaries of Patagonia Holdco, LLC (Patagonia Holdco). In a corporate reorganization, CTLA merged into CTS, with CTS being the surviving entity. After closing, CTS continues to remain a wholly owned subsidiary of Patagonia Holdco, both Delaware entities.

ITC-ASG-20230511-00060 E Syntrio Solutions, LLC

Assignment

Grant of Authority Date of Action: 05/24/2023

Current Licensee: Santa Rosa Communications Ltd.

FROM: Santa Rosa Communications Ltd.

TO: Syntrio Solutions, LLC

On May 11, 2023, Syntrio Solutions, LLC (Syntrio), a Delaware entity, filed a notification of the pro forma assignment of international section 214 authorization (ITC-214-19981125-00827) from Santa Rosa Communications Ltd (SRC Ltd) to Syntrio. On March 1, 2019, SRC Ltd. was converted from a Texas limited partnership to a Texas limited liability company, Santa Rosa Communications, LLC (SRC LLC). On December 31, 2022, as part of an corporate reorganization, SRC LLC assigned its international section 214 authorization (ITC-214-19981125-00827) to Syntrio, its direct parent. SRC LLC is a direct wholly owned subsidiary of Syntrio, which in turn is a wholly owned subsidiary of Santa Rosa Telephone Cooperative, Inc, a Texas entity.

The grant of this pro forma notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

ITC-T/C-20221213-00153 E Advanced Network Communications, LLC

Transfer of Control

Grant of Authority Date of Action: 05/24/2023

Current Licensee: Advanced Network Communications, LLC

FROM: SCHALLER TELEPHONE CO.

TO: SCHALLER TELEPHONE CO.

On December 13, 2022, Advanced Network Communications, LLC (ANC), an Iowa limited liability company that provides international telecommunications service (see pending application ITC-214-20220325-00043), filed a notification of the pro forma transfer of control of ANC, effective December 31, 2011. On May 18, 2023, the Applicants filed a supplement.

On September 1, 2005, ANC became a joint venture held equally (50% each) by Schaller Telephone Co. (Schaller) and Long Lines, LLC (Long Lines). See ITC-T/C-20220427-00057. At that time, the Schaller ownership interest in ANC was split between Schaller (27.5%), and Comserv, Ltd. (Comserv) (22.5%), both Iowa entities. Schaller held a 99.2% interest in Comserv.

On December 31, 2011, the 22.5% ownership interest in ANC held by Comserv was acquired by Schaller, and as a result Schaller held a 50% ownership interest in ANC. The transaction did not affect the ownership interest in ANC held by Long Lines, a Delaware entity.

The grant of this pro forma notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

ITC-T/C-20230411-00046 E T-Mobile USA, Inc.

Transfer of Control

Grant of Authority Date of Action: 05/24/2023

Current Licensee: T-Mobile USA, Inc.

FROM: Deutsche Telekom AG

TO: Deutsche Telekom AG

On April 11, T-Mobile USA, Inc. (T-Mobile USA), a U.S. entity that holds an international section 214 authorization (ITC-214-20011116-00601), filed a notification of the pro forma transfer of control of T-Mobile USA, effective March 31, 2023. T-Mobile USA is a direct wholly owned subsidiary of T-Mobile US, Inc., a U.S. entity. Prior to the transaction, Deutsche Telekom AG (DT), a German entity, had de facto control of T-Mobile US as a result of proxy agreements which authorize DT to vote the majority of the stock of T-Mobile US.

On March 31, 2023, DT's interest in T-Mobile US increased to 50.23%: 5.52% directly in T-Mobile US and 44.71% indirectly through Deutsche Telekom Holding B.V., a German entity that is an indirect wholly owned subsidiary of DT. As a result, DT now holds both de facto and de jure control of T-Mobile US and T-Mobile USA.

ITC-T/C-20230411-00047 E Sprint Communications Company L.P.

Transfer of Control

Grant of Authority Date of Action: 05/24/2023

Current Licensee: Sprint Communications Company L.P.

FROM: Deutsche Telekom AG

TO: Deutsche Telekom AG

On April 11, Sprint Communications Company L.P. (SCCLP), a U.S. entity that holds international section 214 authorizations (ITC-214-19950818-00039, ITC-214-19970421-00220, ITC-214-19990325-00153, ITC-214-20221010-00118, ITC-MOD-20191025-00173, ITC-MOD-20200221-00034), filed a notification of the pro forma transfer of control of SCCLP, effective March 31, 2023. SCCLP is an indirect wholly owned subsidiary of T-Mobile US, Inc., a U.S. entity. Prior to the transaction, Deutsche Telekom AG (DT), a German entity, had de facto control of T-Mobile US as a result of proxy agreements which authorize DT to vote the majority of the stock of T-Mobile US.

On March 31, 2023, DT's interest in T-Mobile US increased to 50.23%: 5.52% directly in T-Mobile US and 44.71% indirectly through Deutsche Telekom Holding B.V., a German entity that is an indirect wholly owned subsidiary of DT. As a result, DT now holds both de facto and de jure control of T-Mobile US and SCCLP.

ITC-T/C-20230412-00048 E T-Mobile Puerto Rico LLC

Transfer of Control

Grant of Authority Date of Action: 05/24/2023

Current Licensee: T-Mobile Puerto Rico LLC

FROM: Deutsche Telekom AG

TO: Deutsche Telekom AG

On April 12, T-Mobile Puerto Rico LLC (T-Mobile Puerto Rico), a U.S. entity that holds and international section 214 authorization (ITC-214-20070626-00246), filed a notification of the pro forma transfer of control of T-Mobile USA, effective March 31, 2023. T-Mobile Puerto Rico is an indirect wholly owned subsidiary of T-Mobile US, Inc., a U.S. entity. Prior to the transaction, Deutsche Telekom AG (DT), a German entity, had de facto control of T-Mobile US as a result of proxy agreements which authorize DT to vote the majority of the stock of T-Mobile US.

On March 31, 2023, DT's interest in T-Mobile US increased to 50.23%: 5.52% directly in T-Mobile US and 44.71% indirectly through Deutsche Telekom Holding B.V., a German entity that is an indirect wholly owned subsidiary of DT. As a result, DT now holds both de facto and de jure control of T-Mobile US and T-Mobile Puerto Rico.

ITC-T/C-20230509-00058 E Long Lines, LLC

Transfer of Control

Grant of Authority Date of Action: 05/24/2023

Current Licensee: Long Lines, LLC

FROM: Long Lines, LLC

TO: Long Lines, LLC

On May 9, 2023, Long Lines, LLC (Long Lines), an Delaware limited liability company that holds and international section 214 authorization (ITC-214-20060724-00362), filed a notification of the pro forma transfer of control of Long Lines to Long Lines Communications, LLC, effective December 31, 2006. On May 18, 2023, the Applicants filed a supplement.

Prior to the transaction, Long Lines was a direct wholly owned subsidiary of Calco, Inc. (Calco), an Iowa entity. On December 31, 2006, in a corporate reorganization, Long Lines Communications was inserted into the ownership structure between Long Lines and Calco. As a result, Long Lines became a direct wholly owned subsidiary of Long Lines Communications and an indirect wholly owned subsidiary of Calco.

The grant of this pro forma notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

ITC-T/C-20230516-00061 E Advanced Network Communications, LLC

Transfer of Control

Grant of Authority Date of Action: 05/24/2023

Current Licensee: Advanced Network Communications, LLC

FROM: Long Lines, LLC

TO: Long Lines, LLC

On May 16, 2023, Advanced Network Communications, LLC (ANC), an Iowa limited liability company that provides international telecommunications service (see pending application ITC-214-20220325-00043), filed a notification of the pro forma transfer of control of ANC from Long Lines, LLC (Long Lines) to Long Lines Communications, LLC, effective December 31, 2006. ANC is jointly owned by Long Lines and Schaller Telephone Company (Schaller), each a holding 50% ownership interest. The transaction did not affect the Schaller ownership of ANC.

Prior to the transaction Long Lines was a direct wholly owned subsidiary of Calco, Inc. (Calco), an Iowa entity. On December 31, 2006, in a corporate reorganization, Long Lines Communications was inserted into the ownership structure between Long Lines and Calco. As a result, Long Lines became a direct wholly owned subsidiary of Long Lines Communications and an indirect wholly owned subsidiary of Calco. Consequently, ANC became an indirect subsidiary of Long Lines Communications.

Grant of this pro forma notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

SURRENDER

ITC-214-19990525-00316 Smartcom Telephone, LLC

By letter filed on May 18, 2023, SmartCom Telephone, LLC notified the Commission that it surrendered its international section 214 authorization effective May 18, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

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

In the Matters of	)	
	)	
Anuvu Licensing Holdings, LLC	)	
	)	
Application to Modify Its Earth Stations Aboard Aircraft Blanket Authorization to Use 12.5-12.75 GHz Band	)	IBFS File No. SES-MFS-20210127-00153
	)	Call Sign E080100
	)	
Application for Special Temporary Authority to Use 12.2-12.75 GHz Band for Earth Stations Aboard Aircraft	)	IBFS File No. SES-STA-20211130-01850
	)	Call Sign E080100

ORDER AND AUTHORIZATION

Adopted: May 25, 2023 **Released: May 25, 2023**

By the Chief, Space Bureau:

I. INTRODUCTION

1. By this Order, we grant the modification application of Anuvu Licensing Holdings, LLC (Anuvu)[1] and authorize Anuvu to use Earth Stations Aboard Aircraft (ESAAs)[2] to communicate with the Geostationary Orbit (GSO) satellite Eutelsat 139 West A in the 12.5-12.75 GHz band in the Fixed Satellite Service (FSS) subject to the conditions set forth below. We find that a limited waiver of the Table of Frequency Allocations in 47 CFR § 2.106 is warranted due to the special circumstances present in this case, in particular, the limited remaining lifespan of the Eutelsat 139 West A satellite and the fact that operations are granted on a non-interference, unprotected basis with respect to operations in the 12.5-12.75 GHz band. Grant of this application will serve the public interest by making efficient use of available spectrum on a satellite, nearing the end of its operational life, by allowing Anuvu short-term use to provide better in-flight connectivity to the U.S. air-travelling public.

[1] Anuvu Licensing Holdings, LLC Application for Authority to Modify its Earth Station Aboard Aircraft Blanket License, IBFS File No. SES-MFS-20210127-00153 (Jan. 27, 2021) (Anuvu Modification Application). Anuvu (formerly known as Global Eagle Telecom Licensing Subsidiary, LLC) is a California-based company that provides satellite connectivity for aviation and maritime customers. To avoid confusion, all references to past filings under the Global Eagle name have been updated to the current corporate entity name, Anuvu Licensing Holdings, LLC.

[2] Earth Stations Aboard Aircraft (ESAAs) is one of three types of Earth Stations in Motion (ESIMs) which use frequencies allocated to the Fixed Satellite Service (FSS) to communicate with a satellite or satellites while located on moving vehicles. ESAAs are located on aircraft, Earth Stations on Vessels (ESVs) provide service on maritime vessels such as boats, cargo ships, and cruise ships, and Vehicle-Mounted Earth Stations (VMES) serve land-based vehicles. *See* 47 CFR § 25.103.

2. This license grant is subject to a number of conditions, as described more fully below. We also deny the Petitions to Deny filed by DISH Network Corporation (DISH) and RS Access (RS Access). The grant of this modification renders moot Anuvu's application for Special Temporary Authority (STA) to allow interim operation while the modification application remains pending, and it is dismissed.[3]

II. BACKGROUND

A. Anuvu Applications and Responsive Petitions

3. On January 27, 2021, Anuvu filed an application to modify its Ku-band Blanket Earth Stations Aboard Aircraft license to add four additional satellite points of communication and add operations in the 12.2-12.75 GHz band.[4] The application was placed on public notice on April 7, 2021.[5] On May 7, 2021, DISH and RS Access filed Petitions to Deny in Part in response to the application for modification.[6] On May 20, 2021, Anuvu filed a Consolidated Opposition to Petitions to Deny in Part, which included an amended narrative requesting waiver[7] to which DISH and RS Access replied.[8] Intelsat and Eutelsat submitted comments in support of Anuvu's applications.[9] Anuvu and RS Access requested "permit but disclose" *ex parte* treatment, which the International Bureau[10] granted.[11]

4. On November 2, 2021, Anuvu requested that the Bureau issue a partial authorization of

[3] *See* Anuvu Licensing Holdings, LLC Application for Authority for Special Temporary Authority, IBFS File No. SES-STA-20211130-01850 (filed Nov. 30, 2021) (Anuvu STA Request).

[4] Anuvu Modification Application.

[5] *Satellite Communications Services Information, Satellite Radio Applications Accepted for Filing*, Report No. SES-02353 (rel. April 7, 2021).

[6] DISH Petition to Deny in Part (filed May 7, 2021) (DISH Petition) and RS Access Petition to Deny in Part (filed May 7, 2021) (RS Access Petition).

[7] Anuvu Licensing Holdings, LLC Consolidated Opposition to Petitions to Deny in Part and Narrative Amendment (filed May 20, 2021) (Anuvu Consolidated Oppositions and Waiver Request); DISH Reply to Anuvu Consolidated Opposition to Petitions to Deny in Part (filed June 2, 2021) (DISH Reply) and the RS Access *ex parte* letter (filed Apr. 18, 2022).

[8] Given that Anuvu has filed a request for waiver of the Table of Allocations, we need not address Anuvu's original argument that no waiver is needed to grant the modification application. For the same reason, we need not address DISH's argument that Anuvu should have requested a waiver. *See* DISH Petition at 2-3.

[9] Letter from Cynthia J. Grady, Assistant General Counsel, Intelsat US, LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (July 1, 2021) (Intelsat *ex parte* letter); Letter from Carlos M. Nalda, Counsel for Eutelsat, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (June 29, 2021) (Eutelsat *ex parte* letter).

[10] On January 4, 2023, the Commission adopted an Order that established the Space Bureau to handle the policy and licensing matters related to satellite communications and other in-space activities formerly handled by the International Bureau, which the Order eliminated. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1, paras. 1-2 (adopted Jan. 4, 2023). The Space Bureau officially launched on April 11, 2023. *See* Press Release, FCC, FCC Space Bureau & Office of International Affairs to Launch Next Week (April 7, 2023), https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf. All references in this document to the International Bureau refer to filings made with, or actions taken by, the International Bureau prior to the establishment of the Space Bureau.

[11] Letter from Trey Hanbury, Counsel, RS Access, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (July 9, 2021) (requesting permit but disclose status). The Bureau granted this request on July 13, 2021. *Satellite Communications Services Information, Satellite Radio Applications Action Taken*, Report No. SPB-02383 (rel. July 14, 2021).

its modification application while deferring the portion relating to the 12.2-12.75 GHz band.[12] On November 12, 2021, the Bureau granted Anuvu's application in part but deferred action on the request to use the 12.2-12.75 GHz band.[13] On November 30, 2021, Anuvu filed an Application for Special Temporary Authority to operate as requested in the Modification.[14] This application was placed on public notice on March 9, 2022.[15] In response, DISH filed a Petition to Deny,[16] to which Anuvu responded.[17] DISH subsequently filed a reply.[18] RS Access filed an *ex parte* letter on April 18, 2022.[19] On August 1, 2022, Anuvu informed the Commission that it would only be using the Eutelsat 139 West A satellite in the 12.5-12.75 GHz band because the Hispasat 143 West satellite had been removed from service.[20] Finally, Anuvu filed a letter supplementing the record on the need for this authorization, the transition plan after the end-of-life of the Eutelsat 139 West A satellite, and the basis for Eutelsat's service offering in the 12 GHz band.[21]

B. Review of GSO ESIMs and the 12.5-12.75 GHz Band

5. Although the Fixed Satellite Service traditionally involves communications between satellites in orbit and earth stations at fixed locations, the growing demand for broadband communications on vessels, land vehicles, and aircraft has resulted in increased use of FSS for mobility applications.[22]

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[12] Letter from David S. Keir, Counsel for Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (filed Nov 2, 2021).

[13] Specifically, the Bureau granted Anuvu's request to communicate with Telesat's Anik-F1R and Anik-F1 in 14.0-14.47 GHz (transmit) and 11.7-12.2 GHz (receive), and Eutelsat 139 West A in 14.0-14.47 GHz (transmit) and 10.95-11.2, 11.45-11.7 GHz (receive). *See Satellite Communications Services Information*, *Satellite Radio Applications Action Taken*, Report No. SES-02417 (rel. Nov. 17, 2021). Anuvu's original modification and STA applications also sought to allow service using the Hispasat 143 West with an expectation that it would operate through 2022. Anuvu notified the Commission that this satellite has been decommissioned and withdrew its request. *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Aug. 1, 2022).

[14] Anuvu STA Request.

[15] *Satellite Communications Services Information, Satellite Radio Applications Accepted for Filing*, Report No. SES-02477 (rel. March 9, 2022).

[16] DISH Petition to Deny Anuvu STA (filed Dec. 28, 2021).

[17] Anuvu Opposition to DISH Petition (filed Jan. 10, 2022).

[18] DISH Reply to Opposition (filed Jan. 21, 2022). Anuvu also requested permit but disclose status. *See* Letter from David S. Keir, Counsel for Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Mar. 8, 2022). The Bureau granted this request on March 9, 2021. *See Satellite Communications Services Information*, *Satellite Radio Applications Action Taken*, Report No. SES-02448 (rel. March 9, 2021).

[19] Letter from Trey Hanbury, Counsel, RS Access, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (filed Apr. 18, 2022).

[20] *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Aug. 1, 2022) (withdrawing original request to access Hispasat 143 West and, as a result, eliminating the need for access to 12.2-12.5 GHz and leaving only a request for use of 12.5-12.75 GHz).

[21] *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023) (Anuvu Supplemental Letter).

[22] A detailed account of the regulatory changes that permitted the increased use of FSS for mobility applications has been set forth in a previous proceeding and is not repeated here. *See Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed-Satellite Service*, Notice of Proposed Rulemaking, 32 FCC Rcd 4239, 4241-42, paras. 3-6 (2017) (*2017 GSO ESIMs NPRM*). *See also* SpaceX Services, Inc. Application for Blanket Authorization of Next Generation Ku-Band Earth Stations in Motion et al., Kepler Communications Inc.
(continued….)

These earth stations in motion, or ESIMs, can enable the provision of very high data rate broadband communications, navigation, situational awareness, and other services to mobile platforms that often cannot be served using other communications technologies.[23] Licensees use ESIMs to deliver broadband to ships, vehicles, trains, and aircraft using the same frequency bands, hardware, satellites, transponder beams, and control stations used to serve earth stations at fixed locations.[24]

6. In the United States, the 12.2-12.7 GHz band is allocated on a co-primary basis for non-federal use for the Broadcasting Satellite Service (BSS), referred to in U.S. regulations as Direct Broadcast Satellite (DBS), for NGSO FSS (space-to-Earth), and for Fixed Service, referred to in U.S. regulations as Multi-Channel Video and Data Distribution Service (MVDDS).[25] The 12.7-12.75 GHz band is allocated on a primary basis for non-Federal use to the Fixed Service (FS), the FSS (Earth-to-space), and the Mobile Service (MS).[26] There is no allocation in the 12.5-12.7 GHz band for GSO FSS operations. In the 12.7-12.75 GHz band, there is an allocation for GSO FSS operations but only in the earth-to-space direction, not the space-to-earth direction requested in the modification application.[27]

Application for Blanket Authorization of Ku-Band Earth Stations on Vessels, DA-22-695 (June 30, 2022) (description of use of 12 GHz for NGSO FSS ESIMs).

[23] *Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Non-Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed-Satellite Service,* Notice of Proposed Rulemaking, 33 FCC Rcd 11416, para. 2 (2018) (*2018 NGSO ESIMs NPRM*).

[24] *Id*. at 11416-17, para. 2.

[25] *See* 47 CFR § 2.106, United States Table of Frequency Allocations, non-Federal Table for the band 12.2-12.7 GHz. NGSO FSS (space-to-Earth) operations are allocated pursuant to footnote 5.487A, which provides additional allocations including in Region 2 as follows:

> [The 12.2-12.7 GHz frequency band is] allocated to the fixed-satellite service (space-to-Earth) on a primary basis, limited to NGSO systems and subject to application of the provisions of [ITU Radio Regulations] 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 cannot 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 [ITU Radiocommunication] 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 [international footnote] No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the [12.2-12.7 GHz band] shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

47 CFR § 2.106, n.5.487A. This international footnote has been applied without modification to non-Federal operations, by placing the footnote on the non-Federal Table. *See* 47 CFR § 2.105(d)(5).

[26] 47 CFR § 2.106. The international and domestic allocations are similar for the 12.7-12.75 GHz band in most respects. However, space-to-Earth transmissions are permitted at 12.7-12.75 GHz in ITU Regions 1 and 3 but not in Region 2. 47 CFR § 2.106, International Table.

[27] *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023). Eutelsat's 139 West A satellite is authorized by France and was originally located at the 7° East Longitude orbital location which, consistent with spectrum allocations applicable in ITU Region I, includes extended Ku-band space segment which is allocated in ITU Region I to the Fixed-Satellite Service in the space-to-Earth direction, including capacity in the 12.5-12.75 GHz band. Eutelsat petitioned for U.S. market access through the Permitted List and requested a waiver to use the band on a non-conforming basis that would not conflict with other operations in the band. The Commission expressly waived its rules to allow space-to-earth transmissions in the 12.5-12.75 GHz band on an unprotected, non-interference basis. *See* Eutelsat S.A. Application for Satellite

(continued….)

7. In 2021, the Commission initiated a rulemaking proceeding to specifically seek comment on how best to maximize the efficient use of the 12.2-12.7 GHz band spectrum and to determine whether the Commission could add new or expanded terrestrial flexible uses, including mobile, in the 12.2-12.7 GHz band without causing harmful interference to incumbent licensees.[28] In a May 18, 2023 Report and Order, the Commission found that it was not in the public interest to add a mobile allocation to permit a two-way terrestrial 5G service in the 12.2-12.7 GHz band, noting that two-way, high-powered terrestrial mobile service in the band would create a significant risk of harmful interference to DBS and NGSO FSS operators.[29] In a Further Notice of Proposed Rulemaking, the Commission also sought comment on expanded fixed or unlicensed terrestrial use of the 12.2-12.7 band.[30] On May 18, 2023, the Commission also adopted a Notice of Proposed Rulemaking to seek comment on a proposal to repurpose some or all of the 12.7-13.25 GHz band for mobile broadband and other expanded use.[31]

III. DISCUSSION

A. Summary of Waiver Petition and Responsive Arguments

8. On May 20, 2021, Anuvu supplemented its modification application narrative to seek a waiver of the U.S. Table of Frequency Allocations[32] to the extent such waivers are required to permit it to

Space Station Authorizations, IBFS File No. SAT-PDR-20191017-00115 (Apr. 8, 2020). Anuvu specifically accepts operation consistent with these limitations.

[28] *See Expanding Flexible Use of the 12.2-12.7 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7-3.24 GHz; MVDDS 5G Coalition Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service*, 36 FCC Rcd 606, 607-614, paras. 3-18 (2021) (*2021 12 GHz NPRM*) (providing an extensive, heavily-annotated discussion of the history, service rules and current use for allocations in the 12.2-12.7 GHz band).

[29] *Expanding Flexible Use of the 12.2-12.7 GHz Band*, WTB Docket 20-443, Report and Order and Further Notice of Proposed Rulemaking, *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket 22-352, Notice of Proposed Rulemaking and Order, FCC 23-36, para. 11, (May 18, 2023) (*12.2 GHz Band Report and Order and FNPRM and 12.7 GHz Band NPRM)*.

[30] *Id.* at paras. 48-56.

[31] *Id.* at paras. 62. *See also, Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use,* GN Docket 22-352, Notice of Inquiry and Order, FCC 22-80 (October 28, 2022). The International, Media, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus also announced a temporary, 180-day, freeze, effective as of September 19, 2022, on filing new or modified applications for licenses in the 12.7-12.75 and 12.75-13.25 GHz bands. *See 180-Day Freeze On Applications for New Or Modified Authorizations for the 12.7-13.25 GHz Band*, Public Notice, DA 22-974 (IB, PSHSB, MB, and WTB Sept. 19, 2022) (*Freeze Public Notice*). In the *12.7 GHz Band NOI*, the Commission ordered the extension of the temporary freeze pending the outcome of GN Docket No. 22-352. Anuvu filed its application in advance of the *Freeze Public Notice* and is therefore not subject to the freeze.

[32] Anuvu Modification Consolidated Opposition to Petitions to Deny in Part, IBFS File No. SES-MFS-20210127-000153 (May 20, 2021) (Attached Amendment Narrative). We dismiss as moot Anuvu's request for a waiver of section 25.202(a)(10), which lists certain frequencies available for use by ESIMs communicating with GSO FSS space stations. Amendment Narrative at 1-2. *See also* 47 CFR § 25.202(a)(10). While this rule section does not list frequencies in the 12.5-12.75 GHz band, the International Bureau previously determined that the inclusion of a list of frequencies for ESIMs in section 25.202(a)(10) does not limit our ability to authorize ESIM operations in other frequency bands. *See SpaceX Services, Inc*., Order and Authorization, DA 22-695, 2022 WL 2399683, at paras. 10-12 (IB, 2022). Instead, operations in frequency bands not on the list may be assigned on a case-by-case basis as indicated in paragraph (b) of section 25.202, in conformance with the U.S. Table of Frequency Allocations, section 2.106 of the Commission's rules. *See also* 47 CFR § 25.202(b). Accordingly, because a waiver of section 25.202(a)(10) is not necessary, we dismiss Anuvu's request for a waiver of this rule as moot. For the same reasons, we reject the arguments that ESIM operations are prohibited in the 12.5-12.75 GHz band. *See* DISH Petition at 2; RS Access Petition at 3 n.9. For the reasons discussed herein, we authorize Anuvu's ESIM operations in the 12.5-

(continued….)

receive satellite signals being transmitted in the United States by Eutelsat 139 West A on a non-interference, unprotected basis.[33] Anuvu asserts that use of the requested spectrum will unlock cost-effective space segment capacity for provision of service that air travelers can rely upon for connectivity while in transit.[34] Anuvu argues that such case-by-case operations are also fully consistent with No. 5.492 of the ITU Radio Regulations, which allows non-conforming FSS use in the 12.5-12.75 GHz band on a non-interference, unprotected basis.[35] Anuvu notes in its Consolidated Opposition and supplemental letter that available space station capacity is currently limited.[36] Anuvu asserts that it uses multiple satellites and frequency bands, and only a fractional portion of its remote terminals would operate simultaneously. Anuvu also observes that the Eutelsat 139 West A satellite operates over the Pacific and provides coverage for only the western United States, thus minimizing the traffic to others in the 12 GHz band.[37] Finally, Anuvu argues that the waiver will not negatively impact other licensees or affect the Commission's decision making in the 12 GHz rulemaking because the Eutelsat 139 West A satellite is nearing its end of life and will not result in consumer disruption because the company has always maintained a mix of service providers using different bands in various locations to serve its aircraft customers.[38] Anuvu notes that the use of the aging Eutelsat 139 West A satellite is a stopgap measure and that by the time the satellite is deorbited "in a few years, Anuvu expects to have access to replacement and additional expansion capacity to be provided from forthcoming launches of new satellites from Intelsat, Hispasat and Astranis. Eutelsat and Intelsat filed letters of support of Anuvu's use of 12 GHz for downlinking.[39] They assert that Anuvu is not seeking long-term protected access to the 12 GHz band, and the authorization would facilitate the efficient use of the 12 GHz band without harming terrestrial fixed stations or Broadcast Satellite Service (BSS) because the earth stations will not be transmitting in the band.

9. RS Access and DISH contend that Anuvu has not justified a waiver. RS Access argues that satellite life expectancy is not an extraordinary circumstance which justifies a waiver of the Table of

12.75 GHz band pursuant to the case-by-case process contemplated in 47 CFR § 25.202(b), finding that a limited waiver of the Table of Frequency Allocations in 47 CFR § 2.106 is warranted. *See infra* para. 11.

[33] Anuvu Modification, Amendment Narrative at 1-2.

[34] Id. at Amendment Narrative at 2.

[35] Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 and SES-STA-20211130-01850 (Apr. 1, 2022).

[36] *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153, at 1-2 (Jan. 25, 2023) (Anuvu January 25 *Ex Parte* Letter) ("In order to provide efficient service to its customers, Anuvu has always endeavored to maximize the use of spectrum available to it, including short-term use of available spectrum on satellites nearing the end of life. With no new Ku-band satellites added over North America in the past five years and significant demand for conventional Ku-band space segment, Anuvu must find ways to increase capacity for airlines that are continuing to increase their demand for service. Anuvu has needed to utilize stopgap capacity on multiple satellites to cover its U.S. routes and access to the additional extended Ku-band spectrum at 12.5-12.75 GHz … will be one of the few remaining ways to meet the demand. Access to this spectrum will serve the public interest by ensuring high quality connectivity for air traveler.") Anuvu further asserted that "12.7-12.75 GHz spectrum is available and operational" on a satellite on which Anuvu has been using conventional Ku-band capacity for almost two years, and because "the availability of additional conventional Ku-band capacity is limited in the near term, access to the 12.7-12.75 GHz spectrum on a satellite which Anuvu is already accessing will help meet immediate capacity needs, but long-term access to this band will not be necessary once additional high-throughput capacity comes online in the coming years." Anuvu January 25 *Ex Parte* Letter at 4.

[37] Amendment Narrative at 4.

[38] *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023).

[39] Eutelsat *ex parte* letter; Intelsat *ex parte* letter.

Allocations.[40] DISH and RS Access also assert that the bar to ESIM operation in the 12 GHz band is buttressed by sound policy considerations because Anuvu customers will receive DBS and MVDDS interference and consequential service disruption, and that the Commission's flexibility in its pending 12 GHz rulemaking will be compromised and the sharing environment in the band will be unduly complicated and the potential for interference increased.[41]

B. Waiver Analysis

10. A waiver is appropriate if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[42] Generally, the Commission may waive any rule if there is good cause to do so[43] and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis.[44]

11. We find that there are special circumstances that warrant grant of Anuvu's waiver request to receive signals in the 12.5-12.75 GHz band, and that deviation from the Table of Allocations better serves the public interest in this case. First, contrary to RS Access's contentions,[45] Anuvu persuasively asserts that the availability of additional conventional Ku-band capacity is limited in the near term and that access to spectrum on a satellite which it is already accessing other Ku-band spectrum, will help meet immediate capacity needs.[46] Further, as previously noted, this satellite has a limited remaining lifespan (estimated to end in mid-2025). Though the life of the satellite cannot be precisely calculated, we reject

[40] Letter from V. Noah Campbell, CEO, RS Access, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 and SES-STA-20211130-01850 (Apr. 18, 2022).

[41] *Id.* at 1-2, 4-5. *See also* RS Access Petition at 1-3; RS Access Reply at 5.

[42] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

[43] *See* 47 CFR § 1.3.

[44] *See Northeast Cellular*, 897 F.2d at 1166 ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation."); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.").

[45] *See* RS Access Reply at 2-3 ("Global Eagle has 1,050 megahertz of ESIM-eligible downlink frequencies freely available to it. Rather than use any of these frequencies, Global Eagle would prefer to use non-ESIM frequencies in the 12.2-12.7 GHz band to satisfy its business objectives . . . . Global Eagle is silent as to why it needs these particular frequencies.").

[46] *See* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Apr. 1, 2022) ("Anuvu also once again refuted petitioners' specious claim that Anuvu has ready access to thousands of megahertz of spectrum that is allocated for potential ESIM use, noting that high demand for Ku-band spectrum for a broad range of uses limits Anuvu's access only to particular Ku-band spectrum that it is able to lease from space segment providers. Anuvu has contracted for certain Ku-band capacity on E139WA and H143W, including portions of the 12 GHz band, precisely to make cost-effective use of the space segment currently available to it. Anuvu's ability to make productive use of this spectrum consistent with the operational limitations that apply to it constitute circumstances justifying waiver of the Commission's rules to the extent such waiver is required."). *See also* Letter from David S. Keir, Counsel, Anuvu, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-MFS-20210127-00153 (Jan. 25, 2023) at 1, 4 ("With no new Ku-band satellites added over North America in the past five years and significant demand for conventional Ku-band space segment, Anuvu must find ways to increase capacity for airlines that are continuing to increase their demand for service. Anuvu has needed to utilize stopgap capacity on multiple satellites to cover its U.S. routes and access to the additional extended Ku-band spectrum at 12.5-12.75 GHz on Eutelsat 139 WA will be one of the few remaining ways to meet the demand. Access to this spectrum will serve the public interest by ensuring high quality connectivity for air travelers.").

arguments from DISH and RS Access that satellite life expectancy, combined with other factors such as demand and service availability, cannot be an extraordinary circumstance justifying a waiver. In fact, the limited remaining lifespan of Eutelsat 139 West A means that it is unlikely to overlap with the initiation of future changes, if any, adopted by the Commission in the 12.5-12.75 GHz band. To this end, Anuvu is already engaged in transition planning upon the end-of-life of the Eutelsat 139 West A satellite.[47] Moreover, deviation from the general rule is warranted because there are significant public interest benefits in making efficient use of an in-orbit satellite asset near the end of its useful lifespan for a near-term solution of allowing Anuvu to expand its service capability to better enable it to meet the growing user demands for connectivity to aircraft while on domestic or international flights. Anuvu will only be receiving signals in this band and thus will cause no harm to licensees. Issuing this grant on an unprotected noninterference basis will help ensure that the presence of these ESAAs in the 12.5-12.75 GHz band do not materially affect the analysis in the open Commission proceedings covering these frequency bands. Moreover, the Commission recently declined to adopt a mobile allocation to permit a two-way, high-power terrestrial 5G service in the 12.2-12.7 GHz band, as proposed by DISH and RS Access, finding that such service would create a significant risk of harmful interference to DBS and NGSO FSS operators.[48] Finally, DISH and RS Access assert concerns about service disruption to Anuvu's customers because of the unprotected nature of the grant.[49] Anuvu customers (e.g., commercial airlines), however, presumably have the ability to change providers if they are not satisfied with the service.

12. Should Anuvu accept this license grant, it will do so subject to the outcome of any future rulemaking, including the pending rulemakings in the 12.2-12.7 GHz band and the 12.7-13.25 GHz band, and subject to the conditions stated below. Anuvu, therefore, assumes the risk of any expenditures made. Grant of this modification is specifically limited to the facts presented in this application and confers no expectation of further FSS GSO ESIM authorizations to operate in the 12.5-12.75 GHz band. Finally, we note that our analysis of this application is limited to the facts and circumstances of this particular application and has no broader applicability beyond it.

IV. CONCLUSION

13. We conclude that waiver should be granted to allow Anuvu's request for ESAA authorizations in the 12.5-12.75 GHz band, as conditioned and set forth herein. These conditions supplement the current conditions that apply to Anuvu's existing license.[50]

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, that the Request for Waiver and the Modification Application filed by Anuvu Licensing Holdings, LLC ARE GRANTED, pursuant to sections 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51 and 0.261, and Sections 4(i), 301, 303(r), 308, and 310 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 301, 303(r), 308, 309, and 310, subject to the requirements and conditions set forth below, and that Anuvu is authorized to operate Earth Stations Aboard Aircraft to communicate with the Eutelsat 139 West A satellite in the United States, including its territories, and on non-U.S.-registered aircraft operating in U.S. airspace. This waiver terminates when Eutelsat 139 West A discontinues operation but no later than June 1, 2025 based on the limited remaining lifespan of Eutelsat 139 West A. Anuvu is afforded 30 days from the date of release of this order and authorization, as conditioned, to decline it. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

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[47] Anuvu Supplemental Letter at 1, 4.

[48] *12.2 GHz Band Report and Order and FNPRM and 12.7 GHz Band NPRM* at para. 11.

[49] *See* DISH Petition at 3; RS Access July 2021 ex parte.

[50] Anuvu Licensing Holdings, LLC Application for Authority Modify its Earth Station Aboard Aircraft Blanket License, IBFS File No. SES-MFS-20190312-00328 (granted Jan. 22, 2020).

15. IT IS FURTHER ORDERED that Anuvu's application for Special Temporary Authority to use the 12.2-12.75 GHz band for Earth Stations Aboard Aircraft is DISMISSED as moot.

16. IT IS FURTHER ORDERED that Anuvu's use of 12.5-12.75 GHz band is subject to the following requirements and conditions:

a. This authorization is granted on a secondary, non-interference, unprotected basis for operations in the 12.5-12.75 GHz band in the United States. The ESAA operations of Anuvu must accept any interference received from both current and future services authorized in the band – even if such interference causes undesirable operations – and must not cause harmful interference to any authorized service, whether licensed or not.

b. This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future, including in WT Docket No. 20-443, *Expanding Flexible Use of the 12.2-12.7 GHz Band* and GN Docket No. 22-352, *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use.* Accordingly, any investment made toward operations in the bands authorized in this order by Anuvu assumes the risk that operations may be subject to additional conditions or requirements or even cessation of operation as a result of any future Commission actions.

c. Anuvu must maintain a U.S. point of contact available 24 hours per day, seven days per week, with the authority and ability to terminate operations authorized herein.

d. Operations outside the United States must also ensure compliance with the applicable laws, regulations, and licensing procedures of other countries, including, as appropriate regulations concerning operations from national or adjacent airspace, as well as with the conditions of this authorization.

e. Authority is granted to operate stations by remote control provided that the operator is responsible for ensuring the operations are in accordance with the terms and conditions of the license and pursuant to section 25.271 of the Commission's rules.

17. IT IS FURTHER ORDERED that the Petition to Deny In Part filed by RS Access, LLC and the Petition to Deny In Part filed by DISH Network Corporation ARE DENIED.

18. IT IS FURTHER ORDERED that the request of Anuvu for a waiver of the United States Table of Frequency Allocations, 47 CFR § 2.106 of the Commission's rules regarding the 12.5-12.75 GHz (space-to-Earth) band IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief
Space Bureau

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

In the Matter of	)	
	)	
Jayme John Leon	)	File No.: EB-FIELDNER-22-00033739
Rockford, Illinois	)	NAL/Acct. No.: 202332010002
	)	FRN: 0033765348

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 30, 2023 **Released: May 30, 2023**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $25,000.00 against Jayme John Leon (Leon), the owner and operator of a Citizens Band Radio Service (CB) station in Rockford, Illinois, for apparently engaging in unauthorized operation in violation of section 301 of the Communications Act of 1934, as amended (Act) and sections 95.933 and 95.957 of the Commission's rules. The Commission's rules authorize the operation of CB stations without the grant of individual licenses, conditioned on compliance with all applicable regulations. Subject to limited exceptions not applicable in this case, the Commission's rules generally prohibit using CB stations for one-way verbal communications, limit conversations to five minutes in length, and prohibit the transmission of music, sound effects, etc. Leon apparently violated the Act and the Commission's rules by using his CB station to make one-way transmissions and to send nonverbal, indecipherable sound effects over long periods, thereby voiding his operating authority. Leon also apparently caused willful or malicious interference in violation section 333 of the Act. Such illegal operations pose a danger to the public because they can disrupt authorized CB uses, such as travelers' assistance, warnings of hazardous road conditions, reporting accidents, etc. Moreover, CB may be used by public service providers and first responders during natural disasters when other infrastructure is damaged or nonexistent.

II. BACKGROUND

A. Legal Framework

2. Section 301 of the Act provides: "No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with . . . a license in that behalf granted under the provisions of this Act."[1] Section 307(e)(1) of the Act provides that "the Commission may by rule authorize the operation of radio stations without individual licenses in" certain services, including CB.[2] Section 95.305 of the Commission's rules authorizes the operation of CB stations without individual licenses, provided that "[s]uch operation *must comply with all applicable rules*."[3] Section 95.905 of the rules provides: "A person's authorization to operate a [CB] station without an individual license pursuant to § 95.305 is voided if that person violates any [applicable] operating rules."[4]

[1] 47 U.S.C. § 301.

[2] *Id.* § 307(e)(1).

[3] 47 CFR § 95.305 (emphasis added).

[4] *Id.* § 95.905.

3. Section 95.931 of the Commission's rules states: "The operator of a [CB] station may use that station for two-way plain language voice communications to other [CB] stations."[5] Certain specific uses are expressly prohibited by sections 95.933 and 95.957 of the rules, including: (a) one-way transmissions,[6] (b) transmitting "music, whistling, sound effects or any other audio material to amuse or entertain,"[7] (c) transmitting "any sound effects solely to attract attention,"[8] and (d) transmission more than five minutes in duration.[9] The use of a CB station in violation of any of these restrictions or any other applicable rule invalidates authorization to operate by rule pursuant to section 95.305, making such transmissions a violation of section 301 of the Act.[10]

B. Factual Background

4. Between December 2021 and June 2022, the Commission received complaints from several CB users in the Rockford, Illinois, area alleging that someone (whom some of the complainants believed to be Leon) had been making multiple one-way transmissions for extended periods of time, including recorded comedy routines, air raid siren sounds, and digital noises. An FCC field agent travelled to Rockford, Illinois, to investigate. On June 21, 2022, at approximately 5:00 p.m. the agent observed a continuous data transmission on CB channel 39.[11] The signal was unintelligible, data-like noise.[12] The transmission continued for over 30 minutes, during which time other users were unable to access the channel. Using direction finding techniques the agent traced the source of the transmissions to an antenna mounted on a house at 2212 Rio Vista Court in Rockford, Illinois.[13] The agent observed a 2006 Honda Accord with Illinois tags parked in the driveway at this location. Vehicle registration records show that Leon is the owner of the automobile and gives 2212 Rio Vista Court as his address. The agent left an on-scene Notice

[5] *Id.* § 95.931.

[6] *Id.* § 95.933(a). There are a few limited exceptions allowing for one-way transmission, none of which is applicable to this case. *See id.* § 95.931(b).

[7] *Id.* § 95.933(e).

[8] *Id.* § 95.933(f).

[9] In all Personal Radio Services, including CB, the operator "must generally limit transmissions to the minimum duration necessary," and follow any "specific duration limits prescribed for particular services. *Id.* § 95.357. The duration of individual CB transmissions is limited "to no more than five minutes," unless the operator is "directly participating in emergency communications" or "assist[ing] a traveler." *Id.* § 95.957.

[10] *Tommie Salter*, Forfeiture Order, 19 FCC Rcd 24746, 24748, para. 6 (EB 2004) ("Because Mr. Salter operated his CB station in a manner inconsistent with the Rules, he was not authorized pursuant to . . . [a previous version of section 95.305] to operate his CB station.").

[11] Forty channels between 26.965 MHz and 27.495 MHz are allocated for CB communications. CB Channel 39 is 27.395 MHz. 47 CFR § 95.963.

[12] "The operator of a CBRS station may use that station to transmit two-way plain language voice communications to other CB stations." *Id.* § 95.931. Prohibited uses include the transmission of "whistling, sound effects or any other audio material," and "sound effects solely to attract attention." *Id.* § 95.933(f)-(g).

[13] The house is owned by 2212 Rio Vista LLC. *See* Parcel Details for Parcel No. 11-13-227-008 (Supervisor of Assessments records of tax year 2022) (copy on file in EB-FIELDNER-22-00033739). Julie A. Leon Cox of Jasper, Georgia, and Michael A. Leon of Sherman Oaks, California. *See* Illinois Secretary of State LLC File Detail Report, File No. 11019838 (copy on file in EB-FIELDNER-22-00033739). Julie Cox and Michael Leon are siblings of Jayme Leon, as indicated in the obituary for Peggy A. Leon, their mother, published by the Rockford Register Star on December 20, 2020, https://www.legacy.com/us/obituaries/rrstar/name/peggy-leon-obituary?id=9357889 (last visited on May 1, 2023) (copy on file in EB-FIELDNER-22-00033739). These familial connections and the presence of his vehicle parked at the property shows that this is Leon's residence. Moreover, Leon confirmed that is his address and acknowledged receipt of the NOUO sent to him at this address during the telephone conversation with the Enforcement Bureau's Regional Director described, *infra*, at paragraph 5.

of Interference to Authorized Radio Stations on the windshield of the car.[14] Leon did not respond to this notice.

5. On September 20, 2022, the Commission mailed a Notice of Unlicensed Operation (NOUO) to Leon, advising him, inter alia, that violations observed on June 21, 2022, voided his authorization to operate a CB station, rendering his transmissions unauthorized and in violation of section 301 of the Act, potentially subjecting him to severe penalties.[15] On September 28, 2022, Leon telephoned the Regional Director for Region One of the Enforcement Bureau (Bureau). Leon denied the allegations, but stated that someone had placed a milk crate containing a battery-operated transmitter at a corner near his house, and that he had found similar items on prior occasions. The Regional Director advised him to submit this information in writing along with any photographic or other documentation. Mr. Leon promised to send a written response to the NOUO, but he has not done so, nor has he provided any information or documentation corroborating the alleged milk crate device.

6. On October 21, 2022, the field agent returned to Rockford, Illinois, to conduct further investigation. At approximately 12:51 p.m., the field agent observed a continuous signal of unintelligible, data-like noise on CB channel 39. Using direction finding techniques the agent tracked the source of the signal to the Rio Vista Court residence. The readings were consistent with those the agent had observed on June 21, 2022. The transmission ceased as the agent drove past the house. The agent did not notice any milk crate or other sort of box on any street corner near the residence.

7. Leon has a history of noncompliance with Commission regulations. On January 19, 1999, the Commission's former Consumer and Information Bureau released a Forfeiture Order[16] imposing a $14,000 monetary penalty against Leon for the transmission of "obscene, indecent or profane words, language or meaning," and for failure to "make [his] station and records available for inspection," both violations of the Commission's CB rules.[17] Leon did not respond to the Forfeiture Order, nor pay the forfeiture amount. Subsequently, on March 1, 2011, the Enforcement Bureau issued a Notice of Violation to Leon, stating that a Bureau agent monitored continuously transmitting music and sound effects from a CB station installed in a U-Haul vehicle, i.e., the same type of behavior at issue in this case, in violation of the rules then in effect prohibiting obscene, indecent or profane language, sections 95.413(a)(2) and 95.426(a) of the rules then in effect.[18]

III. DISCUSSION

A. Leon is Apparently Liable for Violating Sections 301 and 333 of the Act and Sections 95.933 and 95.957 of the Commission's rules.

8. We find that Leon apparently willfully and repeatedly violated section 301 of the Act and sections 95.933 and 95.957 of the Commission's rules. Although section 95.305 authorizes the operation of CB stations without the grant of individual licenses, section 95.905 of the rules provides that such operating authority is automatically voided by the violation of any of the applicable rules. On June 21, 2022, Leon apparently violated sections 95.933 and 95.957 of the Commission's rules by using his station to make a 30 minute one-way transmission comprised of nonverbal, indecipherable sound effects.[19] On September 28, 2022, Leon claimed the source of the unauthorized transmissions was a milk crate containing a battery-operated CB radio placed by an unidentified third-party at a corner near his house,

[14] Notice of Interference to Authorized Radio Stations issued to Jayme John Leon (June 21, 2022; copy on file in EB-FIELDNER-22-00033739).

[15] Notice of Unlicensed Operation, issued to Jayme John Leon (Columbia Regional Office; Sept. 20, 2022).

[16] *Jayme John Leon*, Forfeiture Order, 14 FCC Rcd 858 (CIB 1999).

[17] 47 CFR §§ 95.413(a)(2) (codified at that time as 47 CFR § 95.413(a)(2) (1998)), 95.426(a) (codified at that time as 47 CFR § 95.426(a) (1998)).

[18] *Jayme John Leon*, Notice of Violation, File No. EB-11-PO-0004 (Mar. 1, 2011); *see supra* note 17.

[19] 47 CFR § 95.933(a), (e); 47 CFR § 95.957.

and that he had found similar items on two prior occasions. Leon, however, failed to provide any evidence of the alleged milk crate device. Subsequently, Leon again engaged in the same type of apparent unlicensed operation on October 21, 2022. In both instances, evidence collected by an agent show the source of the signals was the antenna mounted on the Rio Vista Court residence, not a nearby street corner.

9. We also find that Leon apparently repeatedly engaged in willful or malicious interference in violation of section 333 of the Act.[20] Transmitting a signal in order to preclude the authorized used of the frequency by a third party is a violation constitutes willful or malicious interference.[21] The Bureau has found that behavior very similar to that described here, namely, playing loud music and making animal noises to obstruct the use of the frequency by other users constitutes a violation of section 333.[22] The legislative history also shows that CB is within of scope of section 333.[23]

B. Proposed Forfeiture

10. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]"[24] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Leon of up to $23,727 for each violation or each day of a continuing violation, up to a statutory maximum of $177,951 for a single act or failure to act.[25] In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[26] In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[27] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[28]

11. Section 1.80(b) of the Commission's rules sets a base forfeiture, for each violation or each day of a continuing violation, of $10,000 for unauthorized operation and of $7,000 for interference.[29] The Bureau has determined that Leon operated without authorization and engaged in willful or malicious interference on June 21, 2022 and October 21 2022. In light of these apparent findings, given the

[20] *See* 47 U.S.C. § 333.

[21] *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840, 7841, 7845 (EB 2011).

[22] *Michael Guernsey*, Forfeiture Order, 30 FCC Rcd 7354, 7356 (EB 2015).

[23] Section 333 was added to the Act in 1990, providing an explicit statutory prohibition on willful or malicious interference thereby enhancing and facilitating the Commission's efforts to address and remedy interference cases. In their reports on the legislation, both houses of Congress specifically cited citizens band radio as one of the services affected. H.R. Rep. No. 101-316 at 8 (Oct. 27, 1989); S. Rep. 101-215 at 7 (Nov. 19, 1989).

[24] 47 U.S.C. § 503(b).

[25] *See id.* § 503(b)(2)(D); 47 CFR § 1.80(b)(9). *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA-22-1356, 2022 WL 18023008 at *6 (EB Dec. 23, 2023); *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).

[26] 47 U.S.C. § 503(b)(2)(E).

[27] 47 CFR § 1.80(b)(10), Note 2 to para. (b)(10).

[28] *Id.*

[29] 47 CFR § 1.80(b), Table 1. For purposes of the forfeiture calculations, we consider the violations of sections 95.933 and 95.957 of the Commission's rules to be subsumed within the violation of section 301 of the Act in that they trigger the voiding of any operating authority otherwise conferred by section 95.003 of the Commission's rules.

particular facts of this case, and consistent with the *Forfeiture Policy Statement*,[30] we conclude that a monetary forfeiture of $25,000 is warranted.[31] In applying the applicable statutory factors, we also consider whether there is any basis for an upward or downward adjustment of the proposed forfeiture. Based on the facts of this case, we find none.

IV. CONCLUSION

12. Accordingly, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we have determined that Leon apparently willfully and repeatedly violated sections 301 and 333 of the Act and sections 95.933 and 95.957 of the Commission's rules. As such, Leon is apparently liable for a forfeiture of $25,000.[32]

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Jayme John Leon is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars ($25,000) for willful and repeated violations of sections 301 and 303 of the Act, 47 U.S.C. §§ 301 and 333, and sections 95.933 and 95.957 of the Commission's rules, 47 CFR 95.933 and 95.957.

14. **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, Jayme John Leon **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 17 below.

15. In order for Jayme John Leon to pay the proposed forfeiture, Jayme John Leon shall notify the Office of the Field Director at field@fcc.gov his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Jayme John Leon shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[33]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[34] or printed CORES form[35]

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[30] *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).

[31] The maximum fine the Bureau can propose pursuant to its delegated authority against a non-common carrier is $25,000. 47 CFR § 0.311(a)(4).

[32] 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.

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

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

[35] 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.

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).[36] 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.

16. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[37] 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.

17. 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.[38] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Office of the Field Director at mailto:field@fcc.gov.

18. 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

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

[37] *See* 47 CFR § 1.1914.

[38] *Id.* §§ 1.16, 1.80(g)(3).

reflects the petitioner's current financial status.[39] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[40]

19. **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 Jayme John Leon, 2212 Rio Vista Court, Rockford, Illinois 61107-1027.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[39] 47 U.S.C. § 503(b)(2)(E).

[40] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
Philip J. Beaudet	)	File No.: EB-FIELDNER-22-00034515
	)	NAL/Acct. No.: 202332010003
Licensee of Amateur Radio Station N6PJB,	)	FRN: 0001977578
Burney, California	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 30, 2023 **Released: May 30, 2023**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of $24,000 against Philip J. Beaudet (Beaudet) for apparently willfully and repeatedly interfering with the radio communications of the Western Amateur Radio Friendship Association (WARFA) while it was attempting to hold a regularly scheduled net[1] and for failing to provide station identification on amateur radio frequencies.

2. Amateur radio frequencies are shared, and amateur radio licensees may not monopolize any frequency for their exclusive use. Deliberate interference undermines the utility of the Amateur Radio Service by preventing communications among licensed users that comply with the Commission's rules. In addition, the failure to transmit call sign information disrupts the orderly administration of the Amateur Radio Service by preventing licensed users from identifying the entity that is transmitting.

3. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Beaudet, licensee of Amateur Radio Station N6PJB in Burney, California, apparently willfully and repeatedly violated section 333 of the Communications Act of 1934, as amended (Act), and sections 97.101(d) and 97.119(a) of the Commission's rules,[2] by causing harmful interference to licensed radio operations and by failing to transmit his assigned call sign in the Amateur Radio Service. We conclude Beaudet is apparently liable for a forfeiture in the amount of twenty-four thousand dollars ($24,000).

II. BACKGROUND

A. Legal Framework

4. Section 333 of the Act states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under the Act or operated by the United States government."[3] The legislative history for section 333 identifies willful and malicious interference as "intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations."[4]

[1] A "net" is an on-air meeting of a group of local amateurs to discuss matters of common interest.

[2] 47 U.S.C. § 333; 47 CFR §§ 97.101(d), 97.119(a).

[3] 47 U.S.C. § 333.

[4] H.R. Rep. No. 101-316, at 8 (1989).

Section 97.101(d) of the Commission's rules states that "[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communications or signal."[5]

5. Section 97.119(a) states that "[e]ach amateur station, except a space station or telecommand station, must transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions."[6]

B. Factual Background

6. The Commission has received numerous complaints alleging that Beaudet caused intentional interference to other amateur radio operators using frequency 3.908 MHz and failed to transmit his assigned call sign, in apparent violation of section 333 of the Act, and sections 97.101(d) and 97.119(a) of the Commission's rules.[7] On November 22, 2022, in response to continued complaints alleging intentional interference to amateur radio communications, an agent from the San Francisco Field Office (San Francisco Office) of the Federal Communications Commission's Enforcement Bureau (Bureau) drove to Burney, California, to investigate the complaints. The agent monitored frequency 3.908 MHz and used direction finding techniques to identify the source of the transmissions as Beaudet's amateur radio station, N6PJB, which he was operating at his residence in Burney, California. The agent monitored the transmissions emanating from Beaudet's residence on his station for approximately two hours that evening and heard him playing recordings on 3.908 MHz that caused interference to the ongoing WARFA net while failing to provide his assigned amateur call sign.

7. On November 29, 2022, an agent from the San Francisco Office drove to Burney, California, to continue to investigate the complaints. The agent monitored frequency 3.908 MHz and used direction finding techniques again to identify the source of the transmissions as Beaudet's amateur radio station, N6PJB, which he was operating at his residence in Burney, California. The agent monitored the transmissions emanating from Beaudet's station for approximately an hour and a half that evening and heard him playing recordings on 3.908 MHz, causing interference to the ongoing WARFA net and again failing to identify with his assigned call sign. On December 1, 2022, an agent from the San Francisco Office again returned to Burney, California, to continue to investigate the complaints. Once again, the agent monitored frequency 3.908 MHz and using direction findings techniques identified the source of the transmissions as Beaudet's amateur radio station, which he was operating at his residence in Burney, California. The agent monitored the transmissions from Beaudet's station for approximately one hour that evening and heard Beaudet playing recordings on 3.908 MHz causing interference to the ongoing WARFA net without providing his assigned call sign.

III. DISCUSSION

8. We find that Beaudet apparently willfully and repeatedly violated section 333 of the Act and sections 97.101(d) and 97.119(a) of the Commission's rules.[8] First, Beaudet apparently willfully and repeatedly violated section 333 of the Act and section 97.101(d) of the Commission's rules when he caused harmful interference to the WARFA net by playing recordings that interrupted the ongoing communications. On November 22 and 29, and December 1, 2022, an agent from the San Francisco Office observed Beaudet transmitting on Amateur Radio Service frequency 3.908 MHz by playing recordings for extended periods of time. With these transmissions, Beaudet harmfully interfered with other amateur radio operators who were already communicating on the same frequency. Further, his transmissions would have harmfully interfered with any other amateur licensees attempting use the frequency. Based on the nature of Beaudet's transmissions and the playing of a recording, we find that

[5] 47 CFR § 97.101(d).

[6] *Id.* § 97.119(a).

[7] 47 U.S.C. § 333; 47 CFR §§ 97.101(d), 97.119(a).

[8] 47 U.S.C. § 333; 47 CFR § 97.101.

Beaudet's transmissions appear to have been made deliberately to prevent other amateur radio operators from conducting legitimate communications.

9. Second, Beaudet apparently violated section 97.119(a) of the Commission's rules by failing to transmit his Amateur Radio Service call sign.[9] On November 22 and 29, and December 1, 2022, an agent from the San Francisco Office monitored 3.908 MHz collectively for approximately four and a half hours and during those times observed transmissions by Beaudet in which he failed to transmit his assigned call sign, N6PJB.

10. Based on the evidence before us, we find that Beaudet apparently willfully and repeatedly violated section 333 of the Act and sections 97.101(d) and 97.119(a) of the Commission's rules by interfering with other licensed amateur communications and failing to transmit his assigned call sign.[10]

A. Proposed Forfeiture

11. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."[11] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Beaudet of up to $23,727 for each violation.[12] In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[13] In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[14] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[15]

12. Section 1.80 of the Commission's rules sets a base forfeiture of $7,000 for causing interference to authorized stations and a base forfeiture of $1,000 for failing to provide station identification.[16] Therefore, we propose a total base forfeiture of $24,000 (consisting of a $7,000 forfeiture for each of the three days of harmful interference and a $1,000 forfeiture for each of the three days for failure to provide station identification),[17] for which Beaudet is apparently liable. In applying the

[9] 47 CFR § 97.119(a).

[10] 47 U.S.C. § 333; 47 CFR §§ 97.101(d), 97.119(a).

[11] 47 U.S.C. § 503(b).

[12] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7), (9); *see also 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).

[13] 47 U.S.C. § 503(b)(2)(E).

[14] 47 CFR § 1.80(b)(10), tbl. 3 (articulating criteria for upward adjustments (egregious misconduct, ability to pay/relative disincentive, intentional violation, substantial harm, prior violations of any FCC requirements, substantial economic gain, and repeated or continuous violation) and downward adjustments (minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay)).

[15] *Id.*

[16] *Id.* § 1.80.

[17] *See Jay Peralta, Corona, New York*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 3246, 3251 (2017), *forfeiture ordered*, Forfeiture Order, 32 FCC Rcd 7993 (2017) (assessing a forfeiture in the amount of $21,000 per day, which includes the base forfeiture of $7,000 per day for interference, plus the upward adjustment for egregious conduct, for causing deliberate interference to public safety frequencies on 9 different occasions); *see also William F. Crowell*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 14,267, 14,271 (EB, Western Region, San Francisco Office 2015), *forfeiture ordered*, Forfeiture Order, 31 FCC Rcd 8700 (EB 2016) (assessing a forfeiture in the amount of $7,000 per day for 2 days for causing intentional interference to amateur radio operators).

applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none.[18] Finally, we caution Beaudet that future violations of this kind may result in significantly higher forfeitures or revocation of his amateur license.

IV. CONCLUSION

13. We have determined that Beaudet apparently willfully and repeatedly violated section 333 of the Act and sections 97.101(d) and 97.119(a) of the Commission's rules.[19] As such, Beaudet is apparently liable for a total forfeiture of $24,000.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b). and section 1.80 of the Commission's rules, 47 CFR § 1.80, Philip J. Beaudet is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-four thousand dollars ($24,000) for willful and repeated violations of section 333 of the Act, 47 U.S.C. § 333, and sections 97.101(d) and 97.119(a) of the Commission's rules, 47 CFR §§ 97.101 (d) and 97.119(a).

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, Philip J. Beaudet **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 **Error! Reference source not found.**, below.

16. In order for Philip J. Beaudet to pay the proposed forfeiture, Philip J. Beaudet shall notify Laura Smith, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at laura.smith@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Philip J. Beaudet shall send electronic notification of payment to Laura Smith, Enforcement Bureau, Federal Communications Commission, at laura.smith@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[20]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[21] or printed CORES form[22] 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

[18] 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.

[19] 47 U.S.C. § 333; 47 CFR §§ 97.101(d), 97.119(a).

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

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

[22] 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.

(Payor FRN).[23] 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, NE, Washington, D.C. 20554.[24] 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(f)(3) of the Commission's rules.[25] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to 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.[26] 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

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

[24] *See* 47 CFR § 1.1914.

[25] *Id.* §§ 1.16, 1.80(f)(3).

[26] 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[27]

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 Philip J. Beaudet at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[27] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

PUBLIC NOTICE

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

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

DA No. 23-450

Report No. SAT-01729 **Friday May 26, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-STA-20230428-00098 E BlackSky Global LLC
Special Temporary Authority
Granted in Part/ Deferred in Part Effective Date: 05/22/2023

On May 22, 2023, the Satellite Programs and Policy Division granted in part, with conditions, the request of BlackSky Global LLC for special temporary authority for a period of up to 30 days to operate with the Global 7 and Global 8 satellites while the satellites are at lower altitudes than specified in the license. Specifically, the Division granted special temporary authority to BlackSky to operate telemetry, tracking, and command with the Global 7 and Global 8 satellites at altitudes between 340 km and 385 km.

SAT-STA-20230518-00114 E S3143 Intelsat License LLC
Special Temporary Authority
Effective Date:

On May 25, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC for a period of up to 60 days for the Galaxy 35 space station to provide fixed-satellite service (FSS) from the 93.1° W.L. orbital location. Galaxy 35 will operate in the FSS using the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) frequency bands, and will conduct telemetry, tracking, and command within the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) frequency bands.

SAT-STA-20230519-00119 E S2715 Intelsat License LLC
Special Temporary Authority
Effective Date:

On May 25, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC for a period of up to 30 days for Intelsat to operate the Galaxy 17 space station's Ku-band beams over a new coverage area from the 85.0° W.L. orbital location. Galaxy 17 operates in the fixed-satellite service using the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) bands, and uses the following center frequencies for telemetry, tracking, and command: 4197.125 MHz and 4198.875 MHz (space-to-Earth), and 5925.5 MHz and 6424.5 MHz (Earth-to-space).

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

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

In the Matter of	)	
	)	
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	)	MB Docket No. 12-107

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 2023 **Released: May 26, 2023**

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address the National Association of Broadcasters (NAB) petition for an extension of the existing waiver of the requirement that television broadcasters aurally describe visual but non-textual emergency information, such as maps or other graphic displays.[1] That requirement is based on section 79.2(b)(2)(ii) of the Commission's rules, which requires that emergency information provided visually during non-newscast video programming be made audibly accessible to individuals who are blind or visually impaired through the use of a secondary audio stream (the Audible Crawl Rule).[2] For the reasons discussed below, we grant the petition in part, subject to the conditions set forth herein.

II. BACKGROUND

2. Congress, through the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), directed the Commission to identify methods to convey emergency information in a manner accessible to individuals who are blind or visually impaired, and to promulgate rules requiring video programming providers, distributors, and program owners to convey emergency information in a manner accessible to individuals who are blind or visually impaired.[3] Pursuant to that directive, on April 8, 2013, the Commission adopted a rule requiring that emergency information[4] provided visually during

[1] Petition for Extension of Waiver of the National Association of Broadcasters, MB Docket No. 12-107, filed Apr. 5, 2023 (Petition). The Media Bureau (Bureau) issued a Public Notice seeking comment on the Petition on 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, Public Notice, DA 23-308 (rel. Apr. 10, 2023).

[2] 47 CFR § 79.2(b)(2)(ii).

[3] Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA); 47 U.S.C. § 613(g)(1)-(2).

[4] "Emergency information" is defined in section 79.2 of the Commission's rules as "[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge (continued….)

non-newscast programming be made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream that provides such information aurally.[5] The rule states that a video programming provider or video programming distributor[6] that creates visual emergency information content and adds it to a programming stream must provide an aural description of the information on a secondary audio stream, accompanied by an aural tone.[7] The rule applies to visual emergency information content that is either textual, e.g., an on-screen crawl, or non-textual, e.g., maps or other graphic displays. If visual but non-textual emergency information 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.[8]

3. The rule includes a compliance deadline of May 26, 2015.[9] With respect to textual emergency information, the Bureau granted NAB's request for a six-month waiver of this deadline.[10] Thus, broadcasters had until November 30, 2015 to come into compliance with the requirement to provide an aural description on the secondary audio stream of textual emergency information presented during non-newscast programming. With respect to visual but non-textual emergency information, the Bureau granted NAB's initial waiver request, finding that a waiver of the requirement to pass through non-textual visual information would not unduly disrupt the availability of emergency information while the industry developed a reliable technical solution, but it limited the waiver to 18 months as requested by the American Council of the Blind (ACB) and the American Foundation for the Blind (AFB).[11] The Bureau subsequently granted a joint request of ACB, AFB, and NAB to extend the waiver for an additional 18

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of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather." 47 CFR § 79.2(a)(2).

[5] *Id*. § 79.2(b)(2)(ii); *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107 and 11-43, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (*Emergency Information Order*).

[6] A "video programming provider" is "[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 network and the owners of such programming." 47 CFR § 79.1(a)(13). A "video programming distributor" is "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, 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." *Id*. § 79.1(a)(11).

[7] *Id*. § 79.2(b)(2)(ii). *See also Emergency Information Order*, 28 FCC Rcd at 4899, para. 36. In addition, video programming distributors are responsible for ensuring that the aural description of the emergency information and the accompanying aural tone get passed through to consumers. 47 CFR § 79.2(b)(2)(ii). *See also Emergency Information Order*, 28 FCC Rcd at 4899-900, para. 36.

[8] *Emergency Information Order*, 28 FCC Rcd at 4891-92, para. 24. "Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance." Note to 47 CFR § 79.2(a)(2).

[9] 47 CFR § 79.2(b)(2)(ii). *See also Emergency Information Order*, 28 FCC Rcd at 4900-01, para. 37.

[10] *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107 and 11-43, Memorandum Opinion and Order, 30 FCC Rcd 5012, 5021-22, para. 16 (MB 2015) (*2015 Waiver Order*).

[11] *Id*. at 5022-23, para. 17.

months,[12] followed by a joint request of ACB, AFB, and NAB to extend the waiver for an additional five years.[13] The current waiver is scheduled to expire on May 26, 2023.

4. In its Petition, NAB states that, despite its efforts to coordinate with entities potentially capable of developing a technical solution during the current waiver period, it has been unable to identify a workable solution based on existing technology.[14] NAB explains that the software used to create non-textual graphics, such as dynamic radar maps, does not contain metadata text files that can be converted into text, and in turn, used to create aural descriptions.[15] Moreover, NAB notes that once a solution is developed, it has yet to be determined how such solution could be integrated into the existing broadcast system.[16] NAB requests a two-year extension of the waiver to explore alternative technical solutions, including possible solutions afforded by artificial intelligence (AI)-based systems or the ongoing adoption of ATSC 3.0 in more television markets.[17] NAB also states 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.[18]

5. ACB and AFB indicate in their joint comments that while they supported NAB's prior waiver requests, they do not support a further extension of the waiver at this time due to concerns about "the lack of proactive efforts being taken to procure or develop a solution to this known and longstanding issue."[19] The Society of Broadcast Engineers (SBE) filed comments in support of NAB's waiver request.[20] Reply comments in support of the waiver request were filed by NAB, CMG Media

[12] *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*, MB Docket No. 12-107, Memorandum Opinion and Order, 31 FCC Rcd 12540 (MB 2016) (*2016 Waiver Order*).

[13] *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*, MB Docket No. 12-107, Memorandum Opinion and Order, 33 FCC Rcd 5059 (MB 2018) (*2018 Waiver Order*). The Commission's Disability Advisory Committee (DAC) found that there were no solutions available to ensure timely, accurate, and reliable descriptions of images and dynamic video displayed as part of an emergency information crawl over existing legacy broadcast systems for the foreseeable future, and recommended that the Commission extend the existing waiver for five years to allow time for the industry to develop a technical solution. Recommendation of the Disability Advisory Committee, Best Practices for Graphical Emergency Alerts, MB Docket No. 12-107 (Feb. 28, 2018) (DAC Recommendation). The DAC also recommended that consumer groups and industry leaders work together in the interim "to ensure that best practices are communicated to stations for potential use when stationary and dynamic images displaying emergency information are broadcast" in accordance with the Commission's accessible emergency information rule. *Id*. at 2.

[14] Petition at 2-3.

[15] *Id.* at 2.

[16] *Id*.

[17] *Id*. at 4-9.

[18] *Id*. at 9-11.

[19] American Council of the Blind and American Federation for the Blind (ACB and AFB) Comments at 1-2. *See also* Letter from Clark Rachfal, Director of Advocacy and Government Affairs, American Council of the Blind, and Sarah Malaiel, Senior Advisor, Public Policy and Research, American Federal for the Blind, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107, at 1 (filed May 11, 2023) (discussing the need for frequent reports from NAB on steps taken to advance research and development into a technical solution, broadcasters' progress toward compliance, regular community engagement, and training and best practices for broadcasters to offer effective communication).

[20] Society of Broadcast Engineers, Inc. (SBE) Comments at 1.

Corporation, Gray Television, Inc., and four television Affiliates Associations.[21]

6. We evaluate the waiver request in the Petition pursuant to the general waiver authority in section 1.3 of the Commission's rules.[22] Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[23]

III. DISCUSSION

7. We recognize the critical importance of making emergency information accessible to individuals who are blind or visually impaired. With the attachment of certain conditions, we find good cause to waive the requirement that broadcasters aurally describe visual but non-textual emergency information for an additional 18 month period ending November 26, 2024. It is undisputed that the broadcast industry still has not been able to identify an automated technical solution to ensure timely, accurate, and reliable descriptions of images and dynamic video conveying visual emergency information over existing broadcast systems.[24] While ACB and AFB question whether the broadcast industry has made a good faith effort to achieve the accessible emergency information requirements,[25] according to NAB, it has engaged with stakeholders both inside and outside the broadcast industry over the course of the current five-year waiver period in an effort to find a viable technical solution for automated creation and delivery of aural descriptions for visual non-textual emergency information.[26] NAB indicates that it has surveyed the largest television groups about their practices for ensuring the accessibility of emergency information and their awareness of any potential approaches to complying with the Audible Crawl Rule and has had discussions with NAB's Technology Committee, which includes chief technology officers and senior engineers from television groups.[27] Outside the broadcast industry, NAB has investigated options with weather software and graphics providers because the most common use of automated

[21] NAB Reply at 1; CMG Media Corporation (CMG) Reply at 1; Gray Television, Inc. (Gray Television) Reply at 1; ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (Affiliates Associations) Reply at 1. *See also* Letter from Andrea Cummis, SBE President, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107, at 1-2 (filed May 23, 2023) (expressing support for NAB's suggestion, raised in its reply comments, to convene a working group of stakeholders to allow all interested parties to come together to seek real-world solutions to the challenge of providing audio description of non-textual images and ensure that critical emergency information is accurately and effectively conveyed to all television consumers).

[22] 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."). We note that the Commission generally delegated authority to the Media Bureau and the Consumer and Governmental Affairs Bureau to consider waiver requests of the rules adopted in the *Emergency Information Order*. *Emergency Information Order*, 28 FCC Rcd at 4932, para. 99. *See* 47 CFR §§ 0.61, 0.283, and 1.3.

[23] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[24] Petition at 4-9; SBE Comments at 1; CMG Reply at 2; Affiliates Associations Reply at 2; Gray Television Reply at 1; Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-107, at 1 (filed May 11, 2023)

[25] ACB and AFB Comments at 2.

[26] Petition at 5.

[27] *Id*. *See also* Status Report of the National Association of Broadcasters, MB Docket No. 12.107, at 5-7 (filed Nov. 24, 2020) (2020 Status Report) (discussing NAB's outreach efforts during the first half of the current five-year waiver period). Notably, NAB states in the Status Report that "ACB and AFB have reviewed an advance copy of this report and informed NAB that they agree with the information and representations provided herein." 2020 Status Report at 2.

technical solution would be to aurally describe radar maps of hurricanes, high winds, and other shifting weather emergencies.[28] Although NAB has identified new AI-based systems and apps that can convert static images into text and voice, to date, there is currently no such system or app that can automatically convert dynamic, live video into text that can then be aurally described, and do so in the timely, accurate, and reliable manner needed to ensure access during an emergency.[29] While there is disagreement in the record over the extent of outreach conducted, the record demonstrates that a viable technical solution for automated descriptions of emergency information presented in graphic form does not currently exist.[30]

8. Moreover, we note that the record indicates that the critical details of an emergency provided in graphic form are in most instances duplicative of information conveyed in textual crawls, which are already aurally described and accessible to individuals who are blind or visually impaired. NAB explains that to its knowledge "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" and that "it is extremely rare that a graphic image would convey any distinct or additional information."[31] Other commenters confirm that broadcasters make the majority of emergency content provided in graphic form accessible to consumers who are blind or visually impaired.[32] The Commission found in the *Emergency Information Order* that if visual but non-textual emergency information is shown during non-newscast programming, the aural description of this information must accurately and effectively convey the critical details of the emergency and how to respond.[33] Thus, as we previously have stated, broadcasters do not need to take further steps to be in compliance with the Audible Crawl Rule if the critical information conveyed in graphic images is duplicative of emergency information provided in a crawl and transmitted aurally on a secondary audio programming stream.[34] It appears therefore that in at least some instances television broadcasters do not in fact need to invoke the waiver. Accordingly, based on the record in this proceeding, we conclude that special circumstances warrant a further temporary waiver from this aspect of the Audible Crawl Rule and that affording interested parties additional time to develop a technical means to ensure compliance in the future will serve the public

[28] Petition at 5; NAB Reply at 2-3; 2020 Status Report at 5-7.

[29] Petition at 7-9; NAB Reply at 3.

[30] Petition at 2; ACB and AFB Comments at 1-3; SBE Comments at 1; Gray Television Reply at 1; Affiliates Associations Reply at 2-4; CMG Reply at 2.

[31] Petition at 10.

[32] SBE Comments at 3 ("While automated technology is still unable to effectively convert dynamic non-text images for audio description, broadcasters nonetheless still succeed in aurally describing the majority of such content because the images are often duplicated by textual elements (which are then converted to audio and delivered by SAP), described live by commentators, or both."); CMG Reply at 4-5 ("[W]hen CMG interrupts programming to alert viewers about an emergency, CMG anchors, reporters and meteorologists describe orally the prevailing conditions and impact areas, including the visual information that is presented. The visually impaired public is thus able to receive substantial information presented by live radar and traffic maps. In addition, CMG stations run text banners, information boxes and/or news-ticker crawls when a weather radar map or other emergency graphic is shown. Those text and information boxes and crawls are converted to aural output using text-to-speech ('TTS') technology and broadcast to viewers through a secondary audio programming stream ('SAP')."); Affiliates Associations Reply at 6 ("[W]hile a clear technical solution does not yet exist that would allow long-term compliance with the Audible Crawl Rule, consumers who are blind or visually impaired will continue to have access to the critical details about an emergency, including those that are conveyed by visual images, because in almost all cases such information is conveyed by the oral statements of the news reporter or meteorologist, which statements are included in accompanying text crawls, which are themselves aurally described.").

[33] *Emergency Information Order*, 28 FCC Rcd at 4891-92, para. 24. At that time, the Commission found that the record did not support a finding that requiring covered entities to provide an aural description of the critical details provided in a graphic display for the purpose of conveying emergency information (*e.g.*, a list of the counties, cities, or other locations affected by the emergency as shown on a map) would be overly burdensome. *Id*.

[34] *2018 Waiver* Order, 33 FCC Rcd at 5065-66, para. 14; 2016 *Waiver Order*, 31 FCC Rcd at 12544, para. 10.

interest. Yet, given the number of waivers already granted, we decline to grant the waiver for the full two years requested, and instead find that 18 months is appropriate.

9. We decline at this time to require that broadcasters implement an interim manual solution at this time, as suggested by ACB and AFB.[35] As discussed above, NAB alleges that in most instances emergency content provided in graphic displays is duplicative of emergency information provided in textual crawls and transmitted aurally on a secondary audio programming stream.[36] We recognize concerns raised by commenters that mandating a manual solution could lead some broadcasters—particularly, broadcasters that serve smaller communities and may not have adequate staffing or resources—to forego the use of non-textual graphic displays altogether rather than risk a possible FCC penalty.[37] Therefore, a requirement that broadcasters implement a manual solution could effectively result in the provision of less emergency information to the public.[38] Nevertheless, we strongly encourage broadcasters to provide the critical details of graphically displayed emergency information through non-automated means whenever possible during the pendency of this waiver.

10. *Conditions:* To better assist us in monitoring the continued need for a waiver and the broadcast industry's efforts and progress in developing a technical solution, we require NAB to submit quarterly status reports to the Media Bureau and the Consumer and Governmental Affairs Bureau.[39] These reports shall, at a minimum, include the following elements: (1) Information detailing the extent to which broadcasters need to invoke the waiver. NAB may assess broadcasters' continued need for the waiver, for example, by monitoring an appropriate sample size of broadcasters and determining the number or percentage of instances among this sample where a radar map or other graphic image used during the presentation of emergency information conveys critical details that are not provided in an accompanying crawl and transmitted aurally on a secondary audio programming stream. (2) Description of NAB's outreach to the disability community and its efforts, in consultation with the disability community, to develop standards or best practices to be used by broadcasters in ensuring that the critical details of non-textual images displaying emergency information are accurately provided to viewers who are blind or visually impaired and to train broadcasters on the use of such standards or best practices. (3) Description of NAB's efforts, in consultation with broadcast industry experts and relevant non-broadcast technical experts, to develop automated solutions for complying with the requirement to aurally describe visual, non-textual emergency information, such as solutions afforded by AI-based systems or the ongoing adoption of ATSC 3.0 in more television markets, and any progress made toward the development of such solutions. (4) Description of training and best practices for broadcasters to offer effective communication of critical emergency information conveyed in graphic images in textual crawls and aural transmissions on secondary audio programming streams even if the critical emergency information is in a different form than the description of visual material, as well as tangible efforts by NAB to conduct or encourage such training and best practices for specific broadcasters. (5) If at any time during the course of the waiver period, the industry, in consultation with the disability community, determines that there is a preferred and effective alternative to an automated technical solution, any subsequent reports should explain what steps are being or will be taken, using such alternative solution, to ensure that viewers who are blind or visually impaired will have access to the same critical details that are

[35] ACB and AFB Comments at 3.

[36] *See supra* para. 8.

[37] Petition at 4; SBE Comments at 3; CMG Reply at 3-4; Affiliates Associations Reply at 2-3; NAB Reply at 8.

[38] SBE Comments at 3; CMG Reply at 4; Affiliates Associations Reply at 2-3; NAB Reply at 8.

[39] The quarterly status reports will be due September 1, 2023, December 1, 2023, March 1, 2024, June 1, 2024, September 1, 2024, and a final report on December 1, 2024. The status reports should be filed electronically using the Commission's Electronic Comment Filing System (ECFS) in MB Docket No. 12-107, with copies submitted via email to Maria Mullarkey, Chief, Policy Division, Media Bureau, Maria.Mullarkey@fcc.gov, and Suzy Rosen Singleton, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Suzanne.Singleton@fcc.gov.

provided in a non-textual manner.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 613, and sections 0.61, 0.283, and 1.3 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and 1.3, this Memorandum Opinion and Order **IS ADOPTED**.

12. **IT IS FURTHER ORDERED** that the petition for waiver of section 79.2(b)(2)(ii) of the Commission's rules, 47 CFR § 79.2(b)(2)(ii), filed by the National Association of Broadcasters **IS GRANTED IN PART**, subject to the conditions described herein.

13. 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.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

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

In the Matter of	)	
	)	
First Responder Network Authority	)	ULS File No. 0010176495
	)	
Nationwide Public Safety Broadband Network	)	
	)	
Renewal of SP-700 MHz Public Safety Broadband Nationwide License Radio Service	)	
	)	
Call Sign WQQE234		

ORDER

Adopted: May 26, 2023 **Released: May 26, 2023**

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Order*, pursuant to the Spectrum Act,[1] the Public Safety and Homeland Security Bureau (PSHSB or Bureau) grants the application of the First Responder Network Authority (FirstNet) to renew call sign WQQE234,[2] subject to certain reporting conditions, and renews that license for ten years from the expiration of FirstNet's initial license, or for the remaining period of its authorization from Congress, whichever is sooner.[3] As discussed below, the Bureau concludes, based on the totality of the record, that FirstNet has satisfied the statutory renewal standard by demonstrating that, "during the preceding license term, [it] . . . met the duties and obligations set forth [in the Spectrum Act]."[4] In addition, we will continue to monitor and oversee FirstNet's performance during its renewal license term as circumstances warrant.

II. BACKGROUND

2. *FirstNet's Duties and Obligations under the Spectrum Act*. The Spectrum Act calls for the deployment of a nationwide public safety broadband network (NPSBN) in the 700 MHz band.[5] To that end, the Spectrum Act established FirstNet as an independent authority within the National

[1] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6001-6303, 6413, 126 Stat. 156, 201-222, 235-236 (codified at 47 U.S.C. §§ 1401-1443, 1457) (Spectrum Act or the Act).

[2] The application has been assigned file number 0010176495 in the Commission's Universal Licensing System (ULS). The application can be accessed at https://www.fcc.gov/wireless/universal-licensing-system by entering the file number in the Application Search field (FirstNet Application).

[3] The Spectrum Act provides that FirstNet's statutory authority shall terminate 15 years after the statutory date of enactment, i.e., on February 22, 2027, and that further extension of that authority requires action by Congress. 47 U.S.C. § 1426(f).

[4] *Id.* § 1421(b)(2).

[5] *Id.* §§ 1421, 1422.

Telecommunications and Information Administration (NTIA)[6] and required the Commission to grant a license to FirstNet for the 758-769/788-799 MHz band.[7] Congress authorized FirstNet to exercise all powers specifically granted by the provisions of the Spectrum Act, along with such incidental powers as are necessary to accomplish the purposes of the Spectrum Act.[8]

3. The Spectrum Act imposes a range of general and specific duties and obligations on FirstNet in deploying and operating the NPSBN.[9] The Spectrum Act generally charges FirstNet with establishing and managing "a nationwide, interoperable public safety broadband network" in the 700 MHz spectrum.[10] FirstNet's responsibilities include issuing requests for proposals (RFPs) and entering into contracts for the construction, operation and management of the network on a nationwide basis, using funds allocated for these purposes under the Act.[11] FirstNet is obligated to "require deployment phases with substantial rural coverage milestones as part of each phase of the construction and deployment of the network."[12] According to the Spectrum Act, "[t]o the maximum extent economically desirable," FirstNet must "include partnerships with existing commercial mobile providers to utilize cost-effective opportunities to speed deployment in rural areas."[13] The Spectrum Act enumerates other specific duties and obligations of FirstNet, including: establishing network policies;[14] consulting with regional, State, tribal, and local jurisdictions;[15] leveraging existing structure;[16] maintaining and upgrading the network;[17] negotiating and entering into roaming agreements;[18] ensuring development of a list of certified devices and components appropriate for network use;[19] and representing the interests of public safety users of the NPSBN before standards-setting organizations.[20]

4. *Initial License and License Renewal*. The Spectrum Act required the Commission to "grant a license to [FirstNet] for the use of the 700 MHz D block spectrum and existing public safety

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[6] 47 U.S.C. § 1424(a).

[7] *See id.* § 1421(a) ("[T]he Commission shall . . . grant a license to the First Responder Network Authority for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum."); *id.* § 1421(b)(1) (stating that "[t]he license granted [to FirstNet under section 1421(a)] shall be for an initial term of 10 years from the date of the initial issuance of the license"); *see also id.* § 1401(2) (defining "700 MHz D block spectrum" as 758-763/788-793 MHz); *id.* § 1401(14) (defining "existing public safety broadband spectrum" as 763-768/793-798 MHz and 768-769/798-99 MHz).

[8] *Id.* § 1426(a).

[9] *See, e.g.*, *id.*§ 1426.

[10] *Id.* § 1422(a).

[11] *Id.* § 1426(b)(1)(B).

[12] *Id.* § 1426(b)(3).

[13] *Id*.

[14] *Id.* § 1426(c)(1).

[15] *Id.* § 1426(c)(2).

[16] *Id.* § 1426(c)(3).

[17] *Id.* § 1426(c)(4).

[18] 4*Id.* § 1426(c)(5).

[19] *Id.* § 1426(c)(6).

[20] *Id.* § 1426(c)(7).

broadband spectrum."[21] Pursuant to this provision, on November 15, 2012, the Bureau granted FirstNet's initial license, call sign WQQE234, for a period of 10 years.[22]

5. The Spectrum Act requires FirstNet to submit a license renewal application to the Commission as follows:

> Prior to expiration of the term of the initial license granted under [section 1421(a)] or the expiration of any subsequent renewal of such license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under this chapter [i.e., 47 U.S.C. §§ 1401-1473]. A renewal license granted under this paragraph shall be for a term of not to exceed 10 years.[23]

The Public Safety and Homeland Security Bureau subsequently codified this statutory renewal provision in section 90.532 of the Commission's rules.[24]

6. On August 22, 2022, FirstNet submitted an application requesting renewal of its license for a period of not less than 10 years, and attached a statement asserting how it has fulfilled its Spectrum Act duties and obligations.[25] On August 23, 2022, the Bureau released a Public Notice (*FirstNet Public Notice*) finding FirstNet's application to be acceptable for filing and seeking comment on the application.[26]

7. Twelve parties filed comments in response to the *FirstNet Public Notice*.[27] Multiple public safety organizations, including the Association of Public-Safety Communications Officials

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[21] *Id.* § 1421(a).

[22] On September 7, 2012, the Public Safety and Homeland Security Bureau issued, on delegated authority, a *Report and Order* adopting rules implementing the mandate of the Spectrum Act to grant a license to FirstNet. *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012*, Report and Order, 27 FCC Rcd 10953 (PSHSB 2022) (*2012 R&O*). On September 25, 2012, FirstNet submitted a request for issuance of its license as contemplated in the *Report and Order*. *See* Letter from Samuel Ginn, Chairman of the Board, First Responder Network Authority, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau (dated Sept. 25, 2012). The Bureau granted the license in ULS on November 15, 2012, under call sign WQQE234.

[23] 47 U.S.C. § 1421(b)(2). The Administrative Procedure Act and the Commission's rules provide that the FirstNet license will remain in effect, without further action by the Commission, during the pendency of its license renewal application. See 5 U.S.C. § 558(c); 47 CFR § 1.62(a)(1) ("Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license with respect to any activity of a continuing nature, in accordance with the provisions of [5 U.S.C. § 558(c)], such license shall continue in effect without further action by the Commission until such time as the Commission shall make a final determination with respect to the renewal application.").

[24] 47 CFR § 90.532.

[25] FirstNet Application; Exhibit A to FCC Form 601 FirstNet Renewal Application (filed Aug. 22, 2023) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=MbTKk2yJFQK5gCbxvTr826n12LvG7cMyBhBjnK3DDldLvk4Kds2K!-274084681!-2145991326?applType=search&fileKey=1789713459&attachmentKey=21560049&attachmentInd=applAttach (FirstNet Renewal Justification).

[26] *Public Safety and Homeland Security Bureau Announces Acceptance for Filing of First Responder Network Authority License Renewal Application*, PS Docket Nos. 12-94, 06-229, WT Docket No. 06-150, Public Notice, DA 22-882 (Aug. 23, 2022) https://docs.fcc.gov/public/attachments/DA-22-882A1.pdf (*FirstNet Public Notice*).

[27] We attach a list of commenting parties as an Appendix.

International[28] and the Major County Sheriffs of America,[29] filed comments in support of unconditionally granting license renewal to FirstNet. In a joint filing, the Congressional Fire Services Institute; International Association of Fire Chiefs; International Association of Fire Fighters; National Fire Protection Association; and National Volunteer Fire Council, state that FirstNet is a valuable resource for emergency responders across the country and strongly recommend that the FCC renew FirstNet's license.[30] IAFC states that its membership regards FirstNet as a "game changer" in public safety communications, and have found that FirstNet excels at addressing the public safety communications issues identified by the 9/11 Commission.[31] The National Emergency Management Association, National Association of Emergency Medical Technicians, and National Association of EMS Physicians also support renewal, stating that many of their members across the country use FirstNet.[32]

8. The National Sheriff's Association, the Major Cities Chiefs Association, six members of the Verizon First Responder Advisory Council, and T-Mobile filed comments opposing unconditional renewal of FirstNet's license.[33] While none of these parties advocate denial of FirstNet's renewal application, they urge the Commission to apply heightened scrutiny to FirstNet and/or to impose conditions on FirstNet's renewed license.[34] The National Public Safety Telecommunications Council filed comments echoing some of the concerns raised by these parties, but recommends such concerns be addressed outside the renewal process.[35]

[28] Views of Association of Public-Safety Communications Officials (APCO) International Regarding the Application for the Renewal of Station WQQE234 License, ULS No. 0010176495 (filed Sep. 22, 2022) (APCO Comments).

[29] Major County Sheriffs of America (MCSA) Letter of Support, ULS No. 0010176495 (filed Nov. 2, 2022) (MCSA Comments).

[30] Joint Filing of Congressional Fire Services Institute (CFSI); International Association of Fire Chiefs (IAFC); International Association of Fire Fighters (IAFF); National Fire Protection Association (NFPA); and National Volunteer Fire Council (NVFC) Comments, PS Docket Nos. 12-94, 06-229 and WTB Docket No. 06-150 (filed Oct. 9, 2022) (Joint Filing).

[31] IAFC Comments at 2.

[32] *See* National Emergency Management Association (NEMA) Comments, ULS No. 0010176495 (filed Sept. 13, 2022); National Association of Emergency Medical Technicians (NAEMT) Comments, ULS No. 0010176495 (filed Sept. 19, 2022); National Association of EMS Physicians (NAEMSP) Comments, ULS No. 0010176495 (filed Sept. 20, 2022).

[33] National Sheriff's Association (NSA) Comments, ULS No. 0010176495 (filed Sept. 22, 2022) (NSA Comments); Major Cities Chiefs Association (MCCA) Comments, PS Docket Nos. 12-94, 06-229 and WTB Docket No. 06-150 (filed Aug. 24, 2022); Verizon First Responder Advisory Council Members (Verizon FRACM) Comments, ULS No. 0010176495 (filed Oct. 3, 2022) (Verizon FRACM Comments); T-Mobile USA, Inc. (T-Mobile) Comments, ULS No. 0010176495 (filed Oct. 3, 2022) (T-Mobile Comments).

[34] *Id.*

[35] National Public Safety Telecommunications Council (NPSTC) Comments, PS Docket Nos. 12-94, 06-229 and WTB Docket No. 06-150, at 4 (filed Oct. 7, 2022).

9. On February 8, 2023, the Bureau issued a letter to FirstNet requesting supplemental information.[36] FirstNet provided its supplemental response on March 9, 2023.[37] No additional comments have since been filed in the proceeding.

III. DISCUSSION

10. To determine whether FirstNet has met its duties and obligations under the Spectrum Act, we have reviewed the relevant provisions of the Act and the application record with respect to each, including FirstNet's application and supplemental response and the comments submitted by interested parties.

11. *FirstNet Authority and Governance*. Section 1424 of the Act establishes FirstNet as an independent authority within the NTIA,[38] and directs that it be headed by a Board consisting of the Secretary of Homeland Security; Attorney General of the United States; Director of the Office of Management and Budget; and twelve individuals appointed by the Secretary of Commerce.[39] Section 1424 also prescribes how the appointments are to be made;[40] the required qualifications of the members;[41] necessary citizenship;[42] terms of appointment;[43] selection of the Chair;[44] meeting requirements;[45] and compensation.[46]

12. FirstNet states that, in compliance with section 1424(e)-(f), FirstNet "conducts quarterly Board meetings that are open to the public (announced both on the FirstNet Authority website and in the Federal Register), and where eight members of the Board constitute a quorum, including at least six of the members appointed by the Secretary of Commerce."[47] One commenter expressed dissatisfaction with regard to the selection of members of the Board.[48] Under the Spectrum Act, the selection of FirstNet board members is carried out by the Secretary of Commerce, and is therefore outside the scope of this proceeding. Accordingly, we find that to the extent that FirstNet has responsibilities under section 1424, it has met them.

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[36] Letter from Debra Jordan, Chief, Public Safety and Homeland Security Bureau, FCC, to Lisa Casias, Acting Chief Executive Officer, FirstNet Authority (Feb. 8, 2023) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=vpRxkCTRLCQq1VYksrppJ2lPLQtc9CtLqXlgW4VY2P27BRcvq1yv!-274084681!-2145991326?applType=search&fileKey=2082497552&attachmentKey=21684027&attachmentInd=applAttach (PSHSB Supplemental Request).

[37] First Responder Network Authority - Supplemental Information (filed Mar. 9, 2023), https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1822875878&attachmentKey=21703435&attachmentInd=applAttach (FirstNet Supplemental Response).

[38] 47 U.S.C. § 1424(a).

[39] *Id.* § 1424(b)(1).

[40] *Id.* § 1424(b)(2)(A).

[41] *Id.* § 1424(b)(2)(B).

[42] *Id.* § 1424(b)(2)(C).

[43] *Id.* § 1424(c).

[44] *Id.* § 1424(d).

[45] *Id.* § 1424(e) and (f).

[46] *Id.* § 1424(e) and (g).

[47] FirstNet Renewal Justification at 21.

[48] *See* MCCA Comments at 1 (asserting that recent Board appointments made by the Department of Commerce improperly excluded three highly qualified MCCA candidates).

13. *Public Safety Advisory Committee.* As required by Section 1425 of the Act, FirstNet established a standing public safety advisory committee (PSAC) to assist it in carrying out its duties and responsibilities.[49] FirstNet reports that "[t]he PSAC consists of members representing all disciplines of public safety as well as local, state, territorial, and tribal governments. The PSAC also has at-large members and federal members."[50] We find that FirstNet has met this requirement.

14. *Public Safety Broadband Network.* Section 1422 requires FirstNet to establish a nationwide, interoperable public safety broadband network.[51] We find that FirstNet has met this requirement through the deployment and operation of the NPSBN. The NPSBN is operational and serving public safety users nationwide.[52] As required by the Act, the NPSBN uses a single, national network architecture, based on open, commercial standards, that consists of a core network and a radio access network (RAN).[53] The core network consists of national and regional data centers and other geographically distributed elements and functions, all of which are based on commercial standards.[54] It also provides connectivity between the RAN and the public Internet or the public switched network, or both.[55] The RAN consists of cell site equipment, antennas, and backhaul equipment that enable wireless communications with devices using the public safety broadband spectrum on Band 14.[56] The Spectrum Act requires that the RAN be constructed in accordance with state plans developed in the state, local, and tribal planning and implementation grant program under Section 1442(a) of the Act.[57] During its initial license term, FirstNet negotiated buildout plans with each state and constructed the Band 14 RAN in accordance with those plans.[58] At the end of the initial license period, the Band 14 RAN covered

[49] On September 25, 2012, the FirstNet Board adopted a resolution creating the PSAC, and on December 12, 2012, it adopted a resolution defining the role and responsibilities of the PSAC. FirstNet Renewal Justification at 22. *See also* First Responder Network Authority Board Resolution 59, Public Safety Advisory Committee Charter (June 3, 2014) https://www.firstnet.gov/sites/default/files/Board%20Resolution%2059%20on%20PSAC%20Charter_0.pdf. (FirstNet Board Resolution 59 superseded Resolution 13, which created the PSAC on December 11, 2012).

[50] FirstNet Renewal Justification at 22. *See also* FirstNet Authority Fiscal Year 2021, "A Decade of Accomplishments," Annual Report to Congress at 11 (March 2022) https://www.firstnet.gov/sites/default/files/FirstNetAuthority_AnnualReport_FY2021_Final.pdf?file=1&type=node&id=2051&force= (FirstNet FY21 Report).

[51] 47 U.S.C. § 1422(a).

[52] FirstNet Renewal Justification at 1, 6 (stating that the NPSBN is operational and serving over 3.7 million public safety device connections). *See also* FirstNet FY21 Report at 18 (stating that by the close of the fiscal year, network deployment was 95 percent complete and all contract milestones (including nationwide rural and non-rural coverage requirements and nationwide adoption targets) were met by AT&T). Many commenting parties noted they use the NPSBN. *See e.g.*, Joint Filing.

[53] 47 U.S.C. § 1422(b)(1) and (2); FirstNet Renewal Justification at 6. *See also* FirstNet FY21 Report at 29 (stating that the network uses commercially available, open standards to achieve interoperability); Reply of the First Responder Network Authority to "Opposition Comments" Regarding its Application for the Renewal of Station WQQE234, ULS No. 0010176495 at 4-5 (filed Oct. 11, 2022) https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=LplSk2KYGlYkpjFY6nkvvhdBdvh51SYHNTGwDkVQnpDW8YxBTQQ2!-2145991326!-274084681?applType=search&fileKey=1310689983&attachmentKey=21602764&attachmentInd=applAttach (FirstNet Response).

[54] *See https*://www.firstnet.gov/network/TT/firstnet-core.

[55] 47 U.S.C. § 1422(b)(1).

[56] *Id.* § 1422(b)(2).

[57] *Id.* § 1422(b)(1)(B).

[58] FirstNet Renewal Justification at 6.

approximately 2.6 million square miles.[59] In addition, FirstNet's contract with AT&T has provided public safety NPSBN users with access to AT&T's LTE network while buildout of the Band 14 network continues.[60]

15. Some commenters contend that FirstNet is required under the Spectrum Act to make the NPSBN interoperable with non-FirstNet networks, and that the Commission should impose this requirement as a license condition.[61] FirstNet responds that the Spectrum Act requires FirstNet's own network to support nationwide interoperability but does not mandate interoperability with other networks.[62] FirstNet also asserts that its network is interoperable with other networks to the same extent that commercial LTE networks are interoperable with one another.[63] We find that FirstNet has satisfied the requirement in Section 1422(a) to build and operate an "interoperable" nationwide network. The Spectrum Act sought to ensure that the NPSBN would support interoperable communications by all public safety users of the network nationwide.[64] Section 1422(a) does not state that the NPSBN must be interoperable with networks other than the NPSBN, and we decline to read such a requirement into the Act.

16. *RFP and Contract Procurement Process*. Section 1426(b)(1) sets the requirements for FirstNet to issue open, transparent, and competitive RFPs and enter into contracts with private sector entities to build, operate, and maintain the network.[65] The RFP must include appropriate requirements and timetables for construction and deployment of the NPSBN, including coverage areas, service levels, and performance criteria.[66] FirstNet issued an RFP that included these required elements[67] and engaged in a competitive procurement process under federal procurement rules, which resulted in the selection of AT&T to build and operate the NPSBN.[68]

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[59] FirstNet Supplemental Response at 1. FirstNet has since announced the completion of the initial buildout of the Band 14 RAN. Urgent Communications, *AT&T Says it Completed Five-year FirstNet Buildout by March 30 Contractual Deadline* (Apr. 4, 2023), https://urgentcomm.com/2023/04/04/att-says-it-completed-five-year-firstnet-buildout-by-march-30-contractual-deadline/.

[60] FirstNet Renewal Justification at 2.

[61] *See e.g.* T-Mobile Comments at 7-12 (cites omitted); NSA Comments at 2; Verizon FRACM Comments at 5 (cites omitted).

[62] FirstNet Response at 5-6.

[63] *Id*.

[64] The Act's focus on nationwide interoperability of the NSPBN is confirmed by Section 1423 of the Spectrum Act, which called for the establishment of a Technical Advisory Board for FirstNet Interoperability (Interoperability Board) to develop "recommended minimum technical requirements to ensure a nationwide level of interoperability for the [NPSBN]." 47 U.S.C. §§ 1423(a), (c). The Interoperability Board submitted its report to the Commission, which approved and transmitted the report to FirstNet as required by Section 1423(c)(3). *Recommendations of the Technical Advisory Board for First Responder Interoperability*, Order of Transmittal, 27 FCC Rcd 7733 (2012). FirstNet followed the recommendations of the Interoperability Board in establishing the NPSBN. *See e.g.* First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63523, 63525 (Oct. 20, 2015) (stating that FirstNet defines the core network in accordance with relevant sections of the Interoperability Board Report).

[65] 47 U.S.C. § 1426(b)(1)(B).

[66] *Id.* § 1426(c)(1)(A).

[67] FirstNet notes that as required by the Act, the RFP included "coverage and timetables for construction in rural and non-rural areas, partnerships with existing commercial providers, service levels, and performance criteria." FirstNet Renewal Justification at 15.

[68] FirstNet Renewal Justification at 3, 7, 22. *See also* FirstNet FY21 Report at 12-13.

17. Section 1426(c)(2)(B) of the Spectrum Act requires FirstNet to develop policies for the technical and operational requirements of the network.[69] These policies must include (1) practices, procedures, and standards for the management and operation of the NPSBN;[70] (2) terms of service for the use of the NPSBN, including billing practices;[71] and (3) policies for ongoing compliance review and monitoring of the management and operation of the NPSBN; practices and procedures of the entities operating on and the personnel using the NPSBN; and necessary training needs of network operators and users.[72] FirstNet states that these elements were "largely addressed through the NPSBN RFP and resulting NPSBN Contract, and the oversight of the NPSBN Contract under section 1426(b)(1)(D)."[73]

18. *Contract Oversight and Management*. Section 1426(b)(1) requires FirstNet to oversee the contract awarded to AT&T.[74] FirstNet states that "[a]s the network evolves with new technologies, new task orders are issued to AT&T under the NPSBN Contract, or to other contractors as appropriate, for upgrades, additions, improvements, etc. Additionally, any necessary updates or revisions to network policies are addressed through this task order process."[75] FirstNet also asserts that it uses a roadmap "which reflects stakeholder input, to identify and invest fees it collects from AT&T under the NPSBN Contract in new and evolving technologies and improvements."[76]

19. Some commenters urge the Commission to more closely scrutinize the contractual relationship between FirstNet and AT&T, alleging lack of transparency by FirstNet and possible self-dealing or anti-competitive behavior by AT&T.[77] T-Mobile cites a 2020 General Accountability Office (GAO) Report which recommended that FirstNet strengthen its oversight of AT&T by adhering to GAO best practices, sharing oversight with stakeholders, and using end-user satisfaction to gauge performance.[78] In response, FirstNet asserts that its contract with AT&T is fully compliant with the

[69] 47 U.S.C. § 1426(c)(1)(B).

[70] *Id.* § 1426(c)(1)(C).

[71] *Id.* § 1426(c)(1)(D).

[72] *Id.* § 1426(c)(1)(E).

[73] FirstNet Renewal Justification at 16.

[74] *Id.* at 3.

[75] *Id.* at 19.

[76] *Id.* at 18 (citing FirstNet FY21 Report at 21). The "FirstNet Authority Roadmap" was first published in 2019 and updated in 2020 with new research and updated stakeholder input. FirstNet FY21 Report at 21.

[77] *See e.g.* Verizon FRACM Comments at 3, 4.

[78] T-Mobile Comments at 14. *See* Government Accountability Office, Public-Safety Broadband Network: Network Deployment Is Progressing, but FirstNet Could Strengthen Its Oversight, GAO-20-346, at 17-29 (Jan. 2020), https://www.gao.gov/assets/gao-20-346.pdf (2020 GAO Report). The GAO recommendations are as follows:

- GAO Recommendation 1. Develop a Program Schedule documenting the monitoring activities to ensure that the schedule is comprehensive, well-constructed, credible, and controlled.
- GAO Recommendation 2. Work collaboratively with AT&T to examine and identify oversight and monitoring information that can be shared with public safety stakeholders consistent with adequate protection of program sensitive and trade secret information.
- GAO Recommendation 3. Modify the process by which relevant portions of the state-specific commitment reports are shared with the states to ensure the process is consistent, reliable, and transparent.
- GAO Recommendation 4. Further enhance efforts to obtain feedback on public safety sentiment through surveys, targeted engagements, and contractually delivered data, and analyze new and existing data to refine and improve upon crucial sentiment indicators.

requirements of the Spectrum Act and has benefited public safety by enabling the establishment of the nationwide public safety broadband network envisioned by the Act.[79]

20. In its supplemental information request, the Bureau requested that FirstNet provide additional information about its processes and policies to hold AT&T accountable for meeting its contractual obligations, and also asked how FirstNet has addressed the findings and recommendations in the 2020 GAO report.[80] In response, FirstNet provides detailed information about its oversight of the contract with AT&T, including a Quality Assurance Surveillance Plan (QASP),[81] Preliminary Design and Critical Design Reviews that are important assessments in the acquisition process, a Continual Service Improvement Plan, Cyber Security Life Cycle Process, and Technology Refresh/Enhancement Proposals.[82] FirstNet further states that it has accepted and committed to implement all four of GAO's recommendations.[83] FirstNet states that it has completed its activities regarding three of the four recommendations, and GAO has closed each of these recommendations based upon a showing by FirstNet.[84] With respect to the remaining recommendation, FirstNet states that it has completed implementation and submitted confirming documentation to GAO, but the request for GAO to close the recommendation is still pending.[85]

21. We find that FirstNet's response is sufficient to meet the renewal standard, but direct FirstNet to notify us when GAO has closed the remaining outstanding recommendation.[86] We will also continue to monitor AT&T's performance under the contract and FirstNet's oversight of AT&T under FirstNet's renewed license.

22. *Network Safety, Security, and Resiliency.* Section 1426(b)(2) requires FirstNet to ensure the safety, security, and resiliency of the network, including requirements for protecting and monitoring the network to protect against cyberattack.[87] FirstNet states that it has met this requirement. FirstNet notes that network security was included in the Statement of Objectives for the NPSBN RFP, which led to the contract awarded to AT&T.[88] In addition, FirstNet describes procedures and mechanisms it has developed to ensure the safety, security, and resiliency of the network.[89]

23. As noted by some commenters, a 2021 Department of Commerce Inspector General Report (IG Report) questioned FirstNet's governance over network security and its ability to hold AT&T

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[79] FirstNet Response at 3.

[80] PSHSB Supplemental Request, Questions 3, 4.

[81] FirstNet Supplemental Response at 9 (explaining that the QASP provides the framework for evaluating whether AT&T is properly managing quality control (including risk identification and mitigation) to satisfy the contract terms, performance standards, and quality levels identified in the FirstNet objectives).

[82] FirstNet Justification at 18; *see also* FirstNet Supplemental Response at 9-13. A continual service improvement plan is used to identify ways to improve information technology processes and measure these improvements over time (*see* https://www.nist.gov/blogs/blogrige/are-change-management-continuous-improvement-and-innovation-same), while a cybersecurity lifecycle framework is used to improve the management of cybersecurity risk (*see* https://www.nist.gov/cyberframework/online-learning/five-functions). A technology refresh is used to update or upgrade key systems to maintain or improve their functionality.

[83] FirstNet Supplemental Response at 3.

[84] *Id.*

[85] *Id*.

[86] *Id*. at 5-9.

[87] 47 U.S.C. § 1426(b)(2)(A).

[88] FirstNet Renewal Justification at 9.

[89] *Id.* at 9-10.

accountable for failing or ineffective security requirements, leaving the network susceptible to security risks.[90] The IG Report made six recommendations for remedial actions by FirstNet, and directed FirstNet to provide an action plan to the DOC Inspector General.[91] In its request for supplemental information, the Bureau asked FirstNet to provide information regarding the status of that action plan.[92] The Bureau also requested information on (1) processes and policies for communication between AT&T and FirstNet regarding supply chain risk acceptance and supply chain processes; (2) FirstNet's procedures and policies in place to restrict or prevent the use of equipment and/or managed services that could pose a risk to national security; and (3) policies and procedures FirstNet has in place to ensure that its network will operate securely and reliably during a disaster or crisis, including mechanisms to protect FirstNet network and mobile assets against cyberattack.[93]

24. In response, FirstNet states that security and reliability requirements were integral components of the RFP and the subsequent contract with AT&T, and that consistent with these requirements, AT&T has implemented solutions to ensure the security and reliability of the NPSBN.[94] FirstNet states that provisions in its contract with AT&T related to supply chain risk processes ensure that FirstNet has broad visibility into the network's supply chain and the risk level it has assumed.[95] FirstNet uses several oversight mechanisms to ensure the network's security and reliability measures are properly executed.[96] These include: a physically separate core dedicated to public safety; a cybersecurity strategy, including a dedicated Security Operations Center; a reliability strategy that is focused on a network

[90] U.S. Department of Commerce, Office of Inspector General, FirstNet Authority Must Increase Governance and Oversight to Ensure NPSBN Security, Final Report, OIG-22-011-I, at 8, 9 (Dec. 14, 2021), https://www.oig.doc.gov/OIGPublications/OIG-22-011-I.pdf (IG Report).

[91] *Id.* The six OIG recommendations are as follows:

- OIG Recommendation 1. Review existing task order language and modify the appropriate task orders under the NPSBN to strengthen and further clarify cybersecurity requirements; work with internal stakeholders to analyze existing business processes; and develop a plan to improve NPSBN data governance, management, and accessibility.
- OIG Recommendation 2. Develop a process to clearly understand the scans and Continuous Cybersecurity Monitoring and Remediation (CCMR) artifacts provided by AT&T.
- OIG Recommendation 3. Develop a process for additional controls related to App review.
- OIG Recommendation 4. Implement a process that includes a detailed review of the contractually required After-Action Report.
- OIG Recommendation 5. Maintain a dedicated scorecard within the FirstNet Authority's existing scorecard process and ensure that the NPSBN cyber supply chain risk management is reviewed and scored annually.
- OIG Recommendation 6. Maintain a dedicated cybersecurity Supply Chain Risk Management (SCRM) Plan-related scorecard item within its existing scorecard process and upgrade existing clearance levels of the FirstNet Authority cybersecurity oversight staff from Top Secret to Top Secret Sensitive Compartmented Information Security.

[92] PSHSB Supplemental Request, Question 1.

[93] *Id.*, Questions 5-7.

[94] *Id.*

[95] FirstNet Supplemental Response at 13.

[96] *Id.* at 16-20.

designed to meet a 99.99% contractual service availability and that uses multiple geographically distributed core sites nationwide for enhanced redundancy and performance.[97]

25. FirstNet states that the NPSBN cybersecurity solution provides protection without sacrificing usability.[98] According to FirstNet, the NPSBN is redundant; and has a physically separate, dedicated core designed to comply with standards-based security regulations and needs.[99] FirstNet also asserts that the network is designed to continue to evolve to take advantage of new technologies and address emerging security challenges.[100] FirstNet also uses a dedicated fleet of FirstNet deployable assets in its response operations and has oversight plans to protect the cybersecurity of those assets.[101] With respect to supply chain issues, FirstNet states that its contract with AT&T includes supply chain risk provisions to ensure that FirstNet has broad visibility into the network's supply chain and the risk level it has assumed.[102] FirstNet states that to further protect the network, its contract with AT&T prohibits use of equipment identified to be a potential national security risk, including equipment manufactured by Huawei Technologies Company and ZTE Corporation.[103] Rural providers that are engaged to build sites under the FirstNet program are similarly prohibited.[104]

26. With respect to the IG Report, FirstNet states that it accepted all of the recommendations in the IG Report and submitted an action plan to the OIG on February 22, 2022, which the OIG has reviewed and accepted.[105] FirstNet indicates that it has completed its implementation of three of the six recommendations, and that implementation is ongoing with respect to the remaining three recommendations.[106] FirstNet anticipates that it will fully implement these recommendations within the schedule proposed in its action plan.[107]

27. We find that the security measures taken by FirstNet are sufficient to show compliance with the Section 1426(b)(2) for purposes of renewal. However, we condition renewal on FirstNet fully completing implementation of the recommendations in the IG Report, in the projected timeframe, and we direct FirstNet to notify us of its satisfaction of these recommendations. In addition, we will continue to monitor FirstNet's performance with respect to security and reliability under its renewed license, and are prepared to take further action under our oversight authority if circumstances warrant.

28. *Use of Open, Non-Proprietary Standards*. Section 1426 states that FirstNet must promote competition in the equipment market, including devices for public safety communications, by requiring that equipment for use on the network be—

> (i) built to open, non-proprietary, commercially available standards;
> (ii) capable of being used by any public safety entity and by multiple vendors across all public safety broadband networks operating in the 700 MHz band; and

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[97] *Id.*

[98] FirstNet Renewal Justification at 10.

[99] *Id*.

[100] *Id*.

[101] *Id*.

[102] FirstNet Supplemental Response at 13.

[103] *Id.* at 16.

[104] *Id*.

[105] *Id.* at 3.

[106] *Id.*

[107] *Id.*

> (iii) backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable.[108]

We find that FirstNet met these requirements. FirstNet states that the NPSBN is and continues to be built to open, non-proprietary standards, which has allowed device manufacturers to design equipment that functions on the NPSBN.[109] Further, FirstNet has established a device approval program to "ensure that public safety equipment is capable of being used by any public safety entity, and 'to the extent that such capabilities are necessary and technically and economically reasonable,' is backward-compatible with existing commercial networks, through testing and verification reporting."[110] FirstNet also asserts that, "following 3GPP standards allows users of the NPSBN to make and receive calls, send and receive texts, and use data for applications with full device interoperability with users on commercial wireless networks that follow the same international standards."[111]

29. Some commenters question whether FirstNet has improperly expanded the Spectrum Act definition of eligible "public safety" users by extending it to entities other than first responder agencies (e.g., transit agencies, school districts, and public utilities).[112] FirstNet states that it has applied a definition of "public safety" users consistent with the Act, under which first responders receive a higher priority level than other agencies that do not provide emergency response but that support public safety in other ways.[113] FirstNet also notes that the Spectrum Act authorizes it to offer service to non-public safety as well as public safety users, so long as public safety receives priority.[114] We find that FirstNet's definition of "public safety' users and its tiered priority service approach to public safety users is consistent with the Spectrum Act.

30. *Integration with 911.* Section 1426(b)(2)(C) requires FirstNet to promote integration of the network with Public Safety Answering Points (PSAPs), or their equivalent.[115] FirstNet states that the network was structured to allow PSAPs and Public Safety Enterprise Networks (PSENs) to integrate with the NPSBN core network.[116] FirstNet also has had an Emergency Communications Center (ECC) representative on the FirstNet Board since 2019 and has a full-time ECC subject matter expert on staff. FirstNet states that since 2013 it has held over 2,200 engagements with PSAP/911/ECC stakeholders, and published a quarterly newsletter focused on issues of interest to ECC practitioners distributed to nearly 900 ECC stakeholders across the nation.[117] We find that FirstNet has met this requirement.

31. *Areas with Homeland Security or National Security Needs.* The Spectrum Act requires FirstNet to address special considerations for areas or regions with unique homeland security or national security needs.[118] FirstNet notes that the security requirements of the Spectrum Act are included

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[108] 47 U.S.C. § 1426(b)(2)(B).

[109] FirstNet Renewal Justification at 10-11.

[110] *Id.* at 11.

[111] *Id.*

[112] *See e.g.* T-Mobile Comments at 4-7; Verizon FRACM Comments at 1,4-5; NSA Comments at 1, 2.

[113] FirstNet Response at 4.

[114] *Id.*at 4-5.

[115] 47 U.S.C. § 1426(b)(2)(C).

[116] FirstNet Renewal Justification at 11 & n.47 (addressing PSEN and PSAP integration with the FirstNet core network).

[117] *Id.* at 12.

[118] 47 U.S.C. § 1426(b)(2)(D).

throughout the RFP, and were incorporated into the contract with AT&T.[119] FirstNet asserts that "the operational posture and unique information security features of the NPSBN allow for special considerations for events, areas, or regions with unique homeland security or national security needs on a temporary or permanent basis."[120] We find that FirstNet has met this requirement.

32. *Rural Coverage.* We find that FirstNet has met the rural coverage requirements of section 1426 of the Spectrum Act. Specifically, the Act states that, in carrying out the duties and responsibilities, including issuing RFPs, FirstNet must require deployment phases with substantial rural coverage milestones as part of each phase of the construction and deployment of the network.[121] Moreover, the Spectrum Act requires, to the maximum extent economically desirable, that such proposals include partnerships with existing commercial mobile providers to utilize cost-effective opportunities to speed deployment in rural areas.[122] FirstNet states that it incorporated rural coverage as well as milestones in the NPSBN Contract, to satisfy the requirements of section 1426(b)(3).[123]

33. *State and Local Consultation*. FirstNet states that it has consulted with states, territories, regional, tribal, and local jurisdictions regarding "the distribution and expenditures of amounts in relation to the construction of a core and RAN buildout; placement of towers; coverage areas; adequacy of hardening, security, reliability, and resiliency; assignment of priority to local users and entities seeking to use the network; and training needs of local users."[124] FirstNet also notes that it has "incorporated these consultation elements within the NPSBN RFP, subsequently developed state plans for network deployment reflective of consultative input, and maintained a robust program for regularly engaging with stakeholders to continually meet this requirement."[125] No commenter has contested FirstNet's showing on these issues. Therefore, we find FirstNet's submission sufficient to establish that it has met the requirement to consult with regional, State, tribal, and local jurisdictions regarding distributions and expenditures to carry out the policies of the Act.[126]

34. We find that FirstNet has satisfied the requirement to leverage existing infrastructure in fulfilling the duty and responsibility to deploy and operate the NPSBN,[127] in that FirstNet entered into agreements to utilize, to the maximum extent economically desirable, existing commercial or other communications infrastructure; and Federal, State, tribal, or local infrastructure. FirstNet notes that one of the objectives contained in the NPSBN RFP was specifically aimed at satisfying this statutory obligation, and "a majority of the Band 14 transmitting equipment has been located on existing facilities on private, federal, state, tribal, and local lands and/or buildings/structures."[128]

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[119] FirstNet Renewal Justification at 12.

[120] *Id*.

[121] 47 U.S.C. § 1426(b)(3).

[122] *Id*.

[123] FirstNet Renewal Justification at 14 (verifying and validating the NPSBN network buildout, including the achievement of its rural milestones). *See also supra* n.52 (FirstNet has met nationwide rural coverage requirements).

[124] FirstNet Renewal Justification at 16. As required by 47 U.S.C. § 1426(c)(2)(B), FirstNet consulted with the designated single officer or governmental body identified by each state, regional, tribal, or local authority.

[125] *Id.*

[126] 47 U.S.C. § 1426(c)(2)(A).

[127] *Id.* § 1426(c)(3).

[128] FirstNet Renewal Justification at 17.

35. We find that, as required by the Spectrum Act,[129] FirstNet ensured the maintenance, operation, and improvement of the NPSBN, including by ensuring that FirstNet updates and revises any policies established by section 1426 of the Spectrum Act to take into account new and evolving technologies. FirstNet states that, to satisfy the requirements of section 1426(c)(4), the contract makes AT&T responsible for the overall maintenance and operation of the NPSBN.[130]

36. *Roaming*. We find that FirstNet has met the requirement[131] to negotiate and enter into, as it determined appropriate, roaming agreements with commercial network providers to allow the NPSBN to roam onto commercial networks and gain prioritization of public safety communications over such networks in times of an emergency. FirstNet indicates that, pursuant to section 1426(c)(5), public safety users of the NPSBN are able to use AT&T's existing roaming agreements, across the country and internationally, for voice and data services.[132]

37. *Other Statutory Requirements*. FirstNet states that it has met the Spectrum Act requirement to consult with the Director of NIST, the Commission, and the PSAC, and to represent the interests of NPSBN public safety users in standards development proceedings.[133] FirstNet also states that in accordance with Section 1426(c)(8),[134] it has not negotiated or entered into any agreements with a foreign government on behalf of the United States, and that in accordance with Section 1426(e),[135] it has used the money deposited into the Network Construction Fund in the Treasury of the United States to carry out the duties and responsibilities of section 1426. We find that FirstNet has shown compliance with these requirements for purposes of renewal.

38. In sum, based on the totality of the record, we conclude that FirstNet has sufficiently demonstrated compliance with the requirements of the Spectrum Act to warrant renewal of its license. We therefore grant FirstNet's renewal for the remaining period of its authorization, not to exceed ten years, commencing November 15, 2022, or for the remaining period of its authorization from Congress, whichever is sooner, subject to the reporting conditions discussed above. As a Commission licensee, FirstNet remains subject to our statutory and regulatory authority, and we will continue to monitor and oversee FirstNet's performance under its renewed license as circumstances warrant.

IV. ORDERING CLAUSES

39. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 332, as well as Title VI, sections 6003, 6203, and 6302(e), of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6003, 6203, 6302(e), 126 Stat. 156, that the *Order* is ADOPTED.

40. IT IS FURTHER ORDERED that the Licensing Branch of the Policy and Licensing Division SHALL GRANT the pending application for renewal of call sign WQQE234 filed by the First Responder Network Authority, Universal Licensing System File Number 0010176495.

41. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's Rules, 47 CFR §§ 0.191, 0.392.

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[129] 47 U.S.C. § 1426(c)(4).

[130] FirstNet Renewal Justification at 17-18.

[131] 47 U.S.C. § 1426(c)(5).

[132] FirstNet Renewal Justification at 19.

[133] 47 U.S.C. § 1426(c)(7).

[134] *Id.* § 1426(c)(8).

[135] *Id.* § 1426(c)(3).

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief, Public Safety and Homeland Security Bureau

APPENDIX

1. Association of Public-Safety Communications Officials (APCO) International
2. International Association of Fire Chiefs (IAFC)
3. Joint Filing of Congressional Fire Services Institute; International Association of Fire Chiefs; International Association of Fire Fighters; National Fire Protection Association; and National Volunteer Fire Council
4. Major Cities Chiefs Association (MCCA)
5. Major County Sheriffs of America (MCSA)
6. National Association of EMS Physicians (NAEMSP)
7. National Association of Emergency Medical Technicians (NAEMT)
8. National Emergency Management Association (NEMA)
9. National Public Safety Telecommunications Council (NPSTC)
10. National Sheriffs' Association (NSA)
11. T-Mobile USA, Inc. (T-Mobile)
12. Verizon First Responder Advisory Council Members (Verizon FRACM)

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

In the Matter of	)	
	)	
Federated Wireless Expedited Request for	)	GN Docket No. 15-319
Emergency Waiver of Citizens Broadband Radio	)	
Service Incumbent Protection Rules	)	

ORDER

Adopted: May 30, 2023 **Released: May 30, 2023**

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau ("Bureau"), Mobility Division, conditionally grants Federated Wireless's[1] request for a conditional emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules governing the Citizens Broadband Radio Service.[2] Petitioner requests the Commission grant emergency waiver relief of sections 96.67(c)(2) and (3) to relieve Federated Wireless of the requirement for Environmental Sensing Capabilities ("ESC") to detect and protect federal incumbent users in the 3550-3700 MHz band ("3.5 GHz band") from harmful interference for Dynamic Protection Areas ("DPAs") that have been impacted by Typhoon Mawar, including DPAs Guam 1, 2, and the Apra Harbor DPAs (the DPAs, together with the affected ESCs in such DPAs, the "Impacted Systems"). Typhoon Mawar passed north of Guam as a Category 4 storm on May 24, 2023. For the reasons discussed below, we grant Petitioner's Waiver Request subject to the conditions described herein.

II. BACKGROUND

2. In 2015, the Commission adopted rules for shared commercial use of the 3.5 GHz band.[3] The Commission established the Citizens Broadband Radio Service and created a three-tiered access and authorization framework to accommodate shared federal and non-federal use of the band.[4] Access and operations are managed by a Commission-approved, automated frequency coordinator, known as a Spectrum Access System ("SAS"). SASs coordinate operations between federal and non-federal uses by relying on ESCs in DPAs to detect and protect federal incumbent users in the 3.5 GHz band from harmful interference. When there are federal incumbent users operating in the band, ESCs detect their signals and activate the DPA. When the DPA is activated, federal incumbent users are given priority over the other two tiers of users: Priority Access Licensees ("PALs") and General Authorized Access ("GAA") users.

[1] *See* Expedited Request of Federated Wireless for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed May. 24, 2023) (Waiver Request), https://www.fcc.gov/ecfs/search/search-filings/filing/10524183211541.

[2] 47 CFR § 96.67(c)(2)-(3).

[3] *See Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 3975, paras. 44-45 (2015) (*2015 Report and Order*).

[4] *Id.*

In the case that an ESC cannot accurately determine whether federal incumbents are active in the band, they must automatically activate the DPAs.[5]

3. Petitioner seeks a temporary conditional waiver of sections 96.67(c)(2) and (3) of the Commission's rules to relieve itself of the requirement to detect the presence of a signal from a federal system in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.[6] This waiver would allow Federated Wireless to treat the subject DPAs as "inactive" for the duration of the waiver authority and thus avoid the need for the ESCs to automatically activate the DPAs in areas affected by Typhoon Mawar. Petitioner seeks waiver of these requirements in the interest of providing uninterrupted service to approximately 30 Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to thousands of customers in areas that were impacted by Typhoon Mawar.[7] Federated Wireless also requests that the relief be granted subject to conditions that are consistent with the ESC waiver orders that the Bureau issued in response to Hurricanes Ian and Fiona, as well as Tropical Storm Nicole last year.[8]

III. DISCUSSION

4. Section 1.925(b)(3) of the Commission's rules states that the Commission may grant a waiver when either (i) "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest," or (ii) "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."[9] Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.[10]

5. Here, we find that Petitioner's showing, when considered with the conditions established herein, meets the second prong of the Commission's waiver standard. Petitioner asserts that, due to the impact of Typhoon Mawar, which brought hurricane force winds, lightening, and heavy rain, causing widespread power outages across the entire island, the Impacted Systems have lost commercial power and are unable to operate normally.[11] Petitioner also asserts that backhaul at the affected sites will likely be unreliable while carriers attempt to stabilize their operations and that these issues will persist until power is fully restored.[12] Petitioner contends that these power outages have caused DPAs in the affected areas to be activated, impacting approximately 30 CBSDs, potentially disconnecting thousands of customers—including residential and enterprise customers, schools, and oil and gas companies—from critical broadband, voice, and data services.[13] According to the Petitioner, "[m]any of these customers will be

[5] *See Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 15-319, 17-258, Order, 33 FCC Rcd 4987, 4990-91, paras. 6, 9 (2018).

[6] 47 CFR § 96.67(c)(2)-(3). Additionally, to the extent necessary, we also waive applicable sections of 96.15(a)(2), (a)(3), (b)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d).

[7] *See* Waiver Request at 1-2.

[8] *Id.* at 2. *See Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-999 (rel. Sept. 22, 2022); *Federated Wireless, CommScope, Inc., and Google LLC's Expedited Requests for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-1042 (rel. Sept. 30, 2022); *See Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-1165 (rel. Nov. 9, 2022).

[9] 47 CFR § 1.925(b)(3).

[10] 47 CFR § 1.3.

[11] *See* Waiver Request at 1.

[12] *Id*.

[13] *Id.*

relying on these services to stay apprised about ongoing dangers in the aftermath of the storm, while others will leverage connectivity to aid in the restoration of critical services, such as water and electricity."[14] Accordingly, we grant a waiver of section 96.67(c)(2) and (3) of the Commission's rules, subject to the conditions set forth herein, to allow the Federated Wireless SAS to treat the subject DPAs as "inactive" for the duration of this waiver and thereby obviate its ESC from its obligation to detect the presence of a signal from a federal system in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.

6. Specifically, we find the following conditions are required: (1) this waiver only applies to periods where the subject ESC sensors are unable to communicate with the Federated Wireless SAS due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either June 13, 2023, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Petitioner must provide confirmation to the Commission, the Department of Defense ("DoD"), and the Navy within three business days of power restoration to the subject ESC sensors and restoration of backhaul service; (4) extension requests must be justified through demonstration of the specific steps taken to reactivate the subject ESC sensors and the remaining steps necessary to reactivate, and such requests must be filed no later than three business days before expiration of this waiver; and (5) the ESC operator must immediately activate the subject DPAs upon notification from the Commission, the National Telecommunications and Information Administration, or the DoD.

7. In consideration of the emergency presented by Typhoon Mawar, we find that these are unique circumstances that make application of the rules inequitable, unduly burdensome, and contrary to the public interest. For these reasons, we find it is in the public interest to conditionally grant Petitioner's requests for an emergency waiver of sections 96.67(c)(2) and (3), on a time-limited basis and subject to conditions described herein.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the request filed by Federated Wireless for emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission's Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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

PUBLIC NOTICE

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

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

DA 23-454
Released: May 26, 2023

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

WC Docket No(s). 23-139 & 23-154

Comments Due: June 12, 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 26, 2023**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] *See* 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day… unless the Commission has notified the applicant that the grant will not be automatically effective.").

the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **June 12, 2023**.[5] Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[6] Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[7] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.[8] Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations

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[5] Comments are normally due 15 days after the Commission releases public notice of the proposed discontinuance. 47 CFR § 63.71(a). For purposes of computation of time, if the comment deadline falls on a weekend or officially recognized Federal legal holiday, however, comments will be due on the next business day. *See* 47 CFR § 1.4(e) and (j).

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

[7] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[8] 47 CFR § 1.1200 *et seq*.

are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

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

For further information, please see the contact(s) for the specific discontinuance proceeding you are interested in as listed in the Appendix. For further information on procedures regarding section 214 please visit https://www.fcc.gov/encyclopedia/domestic-section-214-discontinuance-service.

– FCC –

Appendix

1) **Applicant(s): Level 3 Telecom on behalf of its CLEC affiliates**[9]
WC Docket No. 23-139, Comp. Pol. File No. 1836
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-139%22))
Affected Service(s) – resold long distance service
Service Area(s) – Alabama; Arkansas; Arizona; California; Colorado; Florida; Hawaii; Idaho; Illinois; Indiana; Kentucky; Louisiana; Maryland; Massachusetts; Minnesota; Mississippi; New Jersey; New Mexico; New York; North Carolina; Ohio; Oregon; South Carolina; Tennessee; Texas; Washington and Wisconsin
Authorized Date(s) – on or after June 29, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): Fusion Cloud Services, LLC and Fusion Telecom of Texas, Ltd., L.L.P.**
WC Docket No. 23-154, Comp. Pol. File No. 1842
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-154*%22))
Affected Service(s) – VoIP services
Service Area(s) – California, Colorado, Georgia, Illinois Texas, and the District of Columbia
Authorized Date(s) – on or after June 27, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

[9] Level 3 Telecom of Alabama, LLC; Level 3 Telecom of Arkansas, LLC; Level 3 Telecom of Arizona, LLC; Level 3 Telecom of California, LP; Level 3 Telecom of Colorado, LP; Level 3 Telecom of Florida, LP; Level 3 Telecom of Hawaii, LP; Level 3 Telecom of Idaho, LLC; Level 3 Telecom of Illinois, LLC; Level 3 Telecom of Indiana, LLC; Level 3 Telecom of Kentucky, LLC; Level 3 Telecom of Louisiana, LLC; Level 3 Telecom of Maryland, LLC; Level 3 Telecom of Minnesota, LLC; Level 3 Telecom of New Jersey, LLC; Level 3 Telecom of New Mexico, LLC; Level 3 Telecom of Mississippi, LLC; Level 3 Telecom of New Jersey, LLC; Level 3 Telecom of New York, LP; Level 3 Telecom of North Carolina, LLC; Level 3 Telecom of Ohio, LLC; Level 3 Telecom of Oregon, LLC; Level 3 Telecom of South Carolina, LLC; Level 3 Telecom of Tennessee, LLC; Level 3 Telecom of Texas, LLC; Level 3 Telecom of Washington, LLC; Level 3 Telecom of Wisconsin, LP; and Level 3 Telecom Data Services, LLC

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6212811
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: May 25, 2023 **Released: May 26, 2023**

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

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider, and we deny Complainant's complaint.

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

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[1] *See* Informal Complaint No. 6212811 (filed May 11, 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.

3. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.[6] Pursuant to our rules, we notified Clear Rate of the complaint.[7] Clear Rate responded to the complaint, stating that authorization was received and confirmed through a third-party verification (TPV) recording.[8] We have reviewed the TPV recording Clear Rate submitted with its response and find that the TPV complies with the verification requirements in the slamming rules.[9] Therefore, we conclude that Clear Rate's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.[10]

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

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

FEDERAL COMMUNICATIONS COMMISSION

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

[6] *See* Informal Complaint No. 6212811; *see also* e-mail from Complainant to Consumer Policy Division, Consumer and Governmental Affairs Bureau (May 24, 2023) (confirming that after filing a slamming complaint with the Commission, her service was switched back to her preferred carrier).

[7] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id*. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[8] *See* Clear Rate Response to Informal Complaint No. 6212811 (filed May 12, 2023) (*Clear Rate Response*). According to Clear Rate, Complainant contacted Clear Rate via e-mail on May 11, 2023, to say that she did not authorize a switch in carrier to Clear Rate. Clear Rate further stated that Complainant's account was still active with Clear Rate, with a past due balance, and that if Complainant "wants to leave Clear Rate, she will need to contact the provider of her choice and ask them to port the service away from Clear Rate." *See Clear Rate Response* at 2.

[9] *See* 47 CFR § 64.1120(c)(3)(iii).

[10] *See id.* § 64.1100(e). If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id*. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

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

In the Matter of	)	
	)	
Telplex Communications d/b/a RingPlanet	)	Complaint No. 6211539
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: May 30, 2023 **Released: May 30, 2023**

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

1. In this Order, we consider a complaint alleging that Telplex Communications d/b/a RingPlanet (RingPlanet) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We conclude that RingPlanet's actions did not result in an unauthorized change in Complainant's telecommunications service provider as defined in the rules, and we deny Complainant's complaint.

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

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[1] *See* Informal Complaint No. 6211539 (filed May 10, 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.

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 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 states that he was called by RingPlanet "under the guise of adding attachments to my landline and switching my service from AT&T. They gave the impression that they were doing this on behalf of AT&T."[10] Pursuant to our rules, we notified RingPlanet of the complaint.[11] RingPlanet disputes that any misrepresentation occurred on the sales call, and asserts that Complainant knew the offer involved switching his service away from AT&T.[12] RingPlanet did not provide recordings of either the sales call or TPV; rather, it states that its service is a wireless service, and that the Commission's carrier change rules, including the prohibition on sales call misrepresentations, do not apply to wireless service.[13]

5. The Commission's slamming rules have not been extended to wireless service.[14] Thus, based on the evidence in the record, we conclude that RingPlanet's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.[15]

6. 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

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[6] *Id*. § 64.1120(a)(1)(i)(A).

[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. 6211539.

[10] *Id.*

[11] 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).

[12] *See* RingPlanet Response to Informal Complaint No. 6211539 (filed May 16, 2023) (*RingPlanet Response*)

[13] *See RingPlanet Response* at 1. RingPlanet also states that the order to switch Complainant's service to RingPlanet was not processed.

[14] We note that the Commission has sought comment on whether to extend slamming regulations to VoIP or other IP-enabled service providers. *See Enabled Services,* WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910-11 paras. 71-72 (2004).

[15] *See* 47 CFR § 64.1100(e). If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id*. § 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.

CFR §§ 0.141, 0.361, 1.719, the complaint filed against Telplex Communications d/b/a RingPlanet IS DENIED.

7. 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

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 23-457
Released: May 30, 2023

FCC SEEKS NOMINATIONS FOR MEMBERSHIP ON COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL

The Federal Communications Commission (Commission) is seeking nominations for membership on the Communications Equity and Diversity Council (CEDC or Committee). Following consultation with the General Services Administration, the Commission anticipates renewing the charter of the CEDC, for a period of two (2) years starting on or about June 22, 2023.

Nominations for membership to the Committee should be submitted to the FCC no later than 11:59 PM ET, June 30, 2023. Procedures for submitting nominations are set forth below.

MISSION

The mission of the Committee is to make recommendations to the Commission on advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability. It shall provide recommendations to the Commission on how to empower people of color and others who have been historically underserved, including persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality, to access, leverage, and benefit from the wide range of opportunities made possible by technology, communication services, and next-generation networks.

In carrying out this mission, the Committee will make recommendations to the Commission on how to accelerate the deployment of high-speed Internet access, or "broadband," in all communities by reducing and/or removing regulatory barriers to infrastructure and investment, and by making recommendations on how to strengthen existing broadband networks and develop new ones. This Committee is intended to provide an effective means for stakeholders to exchange ideas and develop recommendations on broadband deployment and combatting digital discrimination, which will in turn enhance the Commission's ability to carry out its statutory responsibilities regarding broadband deployment.

The Committee will also make recommendations to the Commission on how to accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees.

This Committee is intended to provide an effective means for stakeholders to exchange ideas and develop recommendations to the Commission on access to capital, small business mentoring, upskilling for employment in media and technology industries, media ownership diversity, and procurement opportunities. In doing this, the Committee will also evaluate methods to facilitate the incubation and

participation of small, diverse businesses in the provision of communications products and services to all communities. Such small businesses include those owned by people of color, women, veterans, LGBTQ+ and persons with disabilities. This mission will facilitate the Commission's goals of enhancing equitable access to digital technologies, particularly to communities that are underserved, lower-resourced or subject to persistent poverty or inequality. The Committee's work is also intended to enhance the Commission's ability to advance equity and diversity in the communications industry and carry out its statutory responsibility to promote policies favoring diversity of media voices, localism, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

BACKGROUND

The Committee is organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act (FACA).[1] As authorized by FACA, the Committee may facilitate its work through informal subcommittees, or other subgroups of the Committee, which shall report their activities and recommendations to the Committee as a whole.

The Commission may ask the Committee to create written recommendations or reports to the Commission. The time commitment for participation in any subcommittee or other subgroup may be substantial as such groups may be asked to submit recommendations or reports to the full Committee for its consideration. However, subcommittee or other subgroup meetings may be conducted informally, using suitable technology to facilitate the meetings, subject to oversight by the Designated Federal Officer of the CEDC.

Members will serve at the discretion of the Chairwoman of the Commission. Members must be willing to commit to a two-year term of service from the date of re-charter of the Committee and should be willing and able to attend approximately three (3) one-day plenary committee meetings per year during the Committee's term. Members also will be encouraged to participate in deliberations of at least one (1) subcommittee or other subgroup, if any are established. The Commission will determine the appropriate Committee size necessary to effectively accomplish the Committee's work. Members who fail to regularly attend and participate in subcommittee or plenary committee meetings without excuse for their absence may, at the FCC's discretion, be removed.

Meetings of the full Committee will be open to the public, and timely notice of each meeting will be published in the Federal Register and further publicized through other appropriate vehicles. All such meetings will be fully accessible to individuals with disabilities.

WHO MAY APPLY FOR MEMBERSHIPAND OBLIGATIONS OF MEMBERS

The Commission seeks applications for membership as a primary representative or as an entity's alternate from representatives of various sectors of the communications industry, representatives of state and local regulators, and representatives of consumers and community organizations that wish to be considered for membership on the Committee. Individuals may also apply for membership in their individual capacities. The Commission is particularly interested in receiving nominations and expressions of interest from individuals and organizations in the following categories:

- Organizations and other entities representing disadvantaged communities, such as those with racial, social, or economic disadvantages, as well as small businesses, including those owned by

[1] 5 U.S.C. 10.

women, minorities, people of color, LGBTQ+ and veterans;
- Federal, state, local, and Tribal government agencies;
- Broadcast stations, cable operators, satellite operators, other multichannel video programming distributors, content companies, online video distributors, broadband providers, public interest/consumer/social justice and equity groups, academicians, think tanks, financial institutions including brokerage companies, venture capital, and private equity firms;
- Minority-serving institutions, including Historically Black Colleges and Universities (HBCUs), Hispanic-Serving Institutions (HSIs), Tribal Colleges and Universities (TCUs), and Asian American, Native Hawaiian and Pacific Islander Serving Institutions (AANHPISIs);
- Tech entrepreneurship support organizations that support, incubate, finance and mentor diverse tech start-up organizations and businesses; and
- Qualified representatives of other stakeholders and interested parties with relevant experience.

Members will be selected to balance the expertise and viewpoints that are necessary to effectively address the issues to be considered by the Committee. Members will be appointed as representatives of their organizations or, if appropriate, in their individual capacities as "Special Government Employees." The application requirements for each of those categories are described below. All organizational and all individual members appointed to the Committee, or its working groups are subject to an ethics review by the Commission's Office of General Counsel. Committee members will not be compensated for their service or for related expenses, including travel expenses.

Consistent with Executive Order 14035 (June 25, 2021) and other governing law, the Commission values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its federal advisory committees. The Commission's federal advisory committees strive for a membership that reflects the diversity of the American people.

Applicants possessing expertise or perspectives of interest to the Committee who have requested to serve in an individual capacity as an SGE shall be eligible only if they are not federally registered lobbyists. SGEs are subject to a variety of restrictions under the conflict-of-interest statutes, 18 U.S.C. § 203 et seq., and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. SGEs must file confidential employee financial disclosure reports prior to beginning their service and annually thereafter. SGEs will also be subject to ethics restrictions in section 4(b) of the Communications Act, 47 U.S.C. § 154(b), and in the Commission's rules, 47 C.F.R. Part 19 and 5 C.F.R. Parts 3901 and 3902.

All members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission and shall promptly report to the DFO any changes in representation during their tenure on the federal advisory committee.

Please note this *Public Notice* is not intended to be the exclusive method by which the Commission will solicit nominations to identify qualified candidates; however, all candidates for membership on the Committee will be subject to the same evaluation criteria.

APPLICATION PROCEDURES AND DEADLINE FOR ORGANIZATIONAL NOMINATIONS

All nominations should be submitted to the Commission as soon as possible, but no later than 11:59 PM ET, June 30, 2023. Please indicate if the nominee is seeking consideration for Chair or Vice-Chair of the Committee or would be willing to serve as the head of a subcommittee after they are formed. All nominations, including the requisite statements listed below, should be submitted by e-mail to CEDC@fcc.gov.

No specific nomination form is required; however, each nomination for a primary representative or an alternate must include the following information:

- Name, title, and organization of the nominee;
- The nominee's mailing address, e-mail address, and telephone number;
- A description of the organization's business, including the telecommunications sector or other interests that are relevant to the Committee's business, and a statement of the benefit of having the organization represented on the Committee;
- A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to the Committee, including a narrative detailing the nominee's involvement in issues relevant to the Committee as well as a current resume of the nominee;
- A statement by the organization indicating a willingness to have its representative serve on the Committee for a two-year term, attend at least three Committee meetings, and participate in at least one working group;
- An acknowledgement that neither the organization nor its representative will receive reimbursement of travel expenses or honoraria from the Committee.

An organizational applicant nominating a representative to serve on its behalf on the Committee must submit a written confirmation by an authorized person (*e.g.*, organization or company official) that such organization or company wants the nominee to serve on its behalf on the Committee. The nominating official must possess the executive authority or hold a sufficiently high-level position with the organization to select a representative whose actions will be legally binding on the organizational applicant. For example, this confirmation may be in the following format: "I am [insert official's name], the [insert official's title] at the [insert name of organization - *e.g.*, company, government entity, trade association, *etc.*], with responsibilities for [concise description of position]. My organization would like [insert proposed member's name], who is currently [an employee of/consultant/attorney to the company] to serve as our representative on the Commission's Communications Equity and Diversity Council."

For nominees seeking to represent an entity that is a party to an FCC contract or subcontract or providing services for the benefit of the FCC under contract or subcontract, or in the case of any applicant or nominee who is individually a party to such a contract or providing services for the benefit of the FCC under such a contract, the nomination must include the following:

- A general description of the contract/agreement;
- A description of the product/services that the applicant provides pursuant to the contract/agreement;
- A list of all parties to the contract/agreement;
- The name of the Commission contracting officer (if known); and,
- A certification made by the applicant or nominee that the applicant or nominee has provided written notice to the contracting officer and the FCC Manager, Contracts and Purchasing Center, that the applicant or representative nominee, as applicable, has applied for membership on the Commission's Communications Equity and Diversity Council.

In addition, organizational nominees are required to disclose whether they represent clients before the FCC or represent clients in matters that may come before the Committee, other than representing the organizational applicant that has nominated the proposed representative for service on the Committee. Each nominee shall provide with the application all details of any such representation.

APPLICATION PROCEDURES FOR INDIVIDUALS TO SERVE AS SGE MEMBERS

Nominations should be submitted to the Commission as soon as possible, but no later than 11:59 PM ET, June 30, 2023. Please indicate if the nominee is seeking consideration for Chair or Vice-Chair of the Committee or would be willing to serve as the head of a subcommittee after they are formed. All nominations, including the requisite statements listed below, should be submitted by e-mail to CEDC@fcc.gov.

Individuals seeking to serve as Special Government Employee members of the Committee should include the following application information:

- Name and title of the applicant; current mailing address, email address, and telephone number;
- A statement summarizing the applicant's qualifications and reasons why the applicant should be appointed to the Committee. That statement shall include the individual's specific knowledge or expertise that is relevant to the work of the Committee, including a statement that the applicant is not a registered lobbyist (as noted above, financial and other additional disclosures may also be required);
- A statement that the applicant does not have a contractual or other financial agreement (including as a subcontractor) with the Commission;
- A statement indicating a willingness to serve on the Committee for a two-year term, a commitment to attend at least three meetings per year, and a commitment to participate in at least one working group;
- An acknowledgement that the individual will not be entitled to receive reimbursement of travel expenses or payment of honoraria or other compensation from the Commission;
- A current resume;
- A statement that the applicant does not have clients with matters before the FCC or with matters which may come before the Committee.

FURTHER 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 & Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (TTY).

For additional information about the Committee, please 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.

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PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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News Media Information 202 / 418-0500
Internet: https://www.fcc.gov

DA 23-458
Released: May 30, 2023

WIRELINE COMPETITION BUREAU REMINDS FACILITIES-BASED SMALL VOICE SERVICE PROVIDERS AND GATEWAY PROVIDERS OF STIR/SHAKEN IMPLEMENTATION DEADLINES

WC Docket No. 17-97

This Public Notice reminds facilities-based small voice service providers and gateway providers not subject to an extension that they must implement the STIR/SHAKEN caller ID authentication framework in their Internet Protocol (IP) networks no later than **June 30, 2023**.[1]

In March 2020, the Commission adopted rules pursuant to the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act,[2] requiring voice service providers to implement STIR/SHAKEN caller ID authentication technology in the IP portions of their networks by June 30, 2021.[3] In September 2020, the Commission granted extensions for compliance with this deadline to certain classes of providers,[4] including a two-year extension for small voice service providers (those with 100,000 or fewer voice subscriber lines),[5] and required providers with an extension to implement robocall mitigation programs.[6] Based on "overwhelming record support and available

[1] *See* 47 CFR §§ 64.6302(c); 64.6304(a)(1); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Fourth Report and Order, FCC 21-122, at 7, para. 14 (Dec. 10, 2021) (*Small Provider Order*); *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 28, para. 59 (May 20, 2022) (*Gateway Provider Order*). Like voice service providers, gateway providers must either upgrade non-IP portions of their networks to IP and fully implement STIR/SHAKEN, or work with a working group, standards group, or consortium to develop a non-IP caller ID authentication solution. *See* 47 CFR § 64.6303; *Gateway Provider Order* at 29, para. 62.

[2] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (codified at 47 U.S.C. § 227(b)) (2019).

[3] *Call Authentication Trust Anchor; Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3252, 3257-58, paras. 24, 32-35 (2020); *see* 47 CFR § 64.6301.

[4] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1876, para. 38 (2020) (*Second Caller ID Authentication Report and Order*). The Commission granted the following implementation extensions: (1) a two-year extension to small voice service providers; (2) an extension to voice service providers that cannot obtain a digital certificate needed to authenticate caller ID information due to the Governance Authority's Service Provider Code (SPC) token access policy until such provider is able to obtain a certificate; (3) a one-year extension to services scheduled for section 214 discontinuance; and (4) as required by the TRACED Act, an extension for the parts of a voice service provider's network that rely on technology that cannot initiate, maintain, and terminate SIP calls until a solution for such calls is reasonably available. *Id.*

[5] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877, para. 40.

evidence showing that non-facilities-based small voice service providers are originating a large and disproportionate amount of robocalls,"[7] the Commission subsequently shortened the extension for this subset of small voice service providers by one year to June 30, 2022, while maintaining the full extension until June 30, 2023 for those small voice service providers that are facilities-based.

In May 2022, the Commission extended caller ID authentication and robocall mitigation obligations to gateway providers.[8] Pursuant to these rules, as of January 11, 2023, gateway providers were required to develop and implement robocall mitigation programs with respect to calls that are carrying a U.S. number in the caller ID field.[9] By June 30, 2023, gateway providers must use STIR/SHAKEN to authenticate unauthenticated Session Initiation Protocol (SIP) traffic carrying a U.S. North American Numbering Plan (NANP) number in the caller ID field.[10]

Facilities-based small voice service providers and gateway providers must update their certifications and associated filings in the Robocall Mitigation Database within 10 business days of completion of STIR/SHAKEN implementation.[11] Facilities-based small voice service providers and gateway providers that fail to implement the STIR/SHAKEN authentication framework by **June 30, 2023**, or to update their certifications and associated filings in the Robocall Mitigation Database accordingly, may be subject to appropriate enforcement action.[12]

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

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[6] *Id*. at 1897, para. 74.

[7] *Small Provider Order* at 5, para. 9. The Commission defines a voice service provider as "non-facilities based" if it offers voice service to end-users solely using connections that are not sold by the provider or its affiliates. *Id.* at 9, para. 19; *see also* 47 CFR 64.6300(h).

[8] *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").

[9] *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).

[10] 47 CFR § 64.6302(c); *see also Gateway Provider Order* at 28, para. 59. The Commission granted extensions for compliance with this deadline to two classes of gateway providers—those that cannot obtain a SPC token, and those whose networks, or parts thereof, rely on non-IP technology. *See Gateway Provider Order* at 29, paras. 61-62; 47 CFR § 64.6304(b), (d).

[11] 47 CFR § 64.6305(c)(5), (d)(5); *see also Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1903, para. 85 ("We also require voice service providers to submit to the Commission via the appropriate portal any necessary updates to the information they filed in the certification process within 10 business days."); *Small Provider Order* at 12, para. 24; *Gateway Provider Order* at 19, para. 41.

[12] 47 U.S.C. § 503(b); *see also Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1903, para. 83 ("If we find that a certification is deficient in some way . . . we may take enforcement action as appropriate. Enforcement actions may include, among others . . . imposition of a forfeiture."); *Small Provider Order* at 14, para. 26; *Gateway Provider Order* at 18, para. 40.

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

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-287
	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	

ORDER

Adopted: May 30, 2023 **Released: May 30, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau), on its own motion, grants a limited, one-time waiver to a limited number of Lifeline subscribers who received incorrect information about the deadline for recertifying their eligibility for the Lifeline program. Specifically, in letters from the Universal Service Administrative Company (USAC), these subscribers were informed that they had approximately 80 days in which to recertify their eligibility for the Lifeline program, rather than the 60-days provided for under the Lifeline program rules. To prevent the impacted Lifeline subscribers from experiencing the hardship of de-enrollment as a result of their reliance on the incorrect deadline set forth in the USAC letters, we waive, to the extent necessary, the 60-day recertification deadline and allow the impacted Lifeline subscribers to recertify by the deadline provided in their respective USAC recertification letters.

II. BACKGROUND

2. The Lifeline program rules require each Lifeline subscriber to recertify his or her continued eligibility for the Lifeline program annually.[1] In most instances, USAC is responsible for conducting Lifeline subscriber recertifications.[2] In those instances, where USAC cannot verify the subscriber's continued eligibility through an eligibility database, USAC is required by the Commission's rules to notify the subscriber in writing that the subscriber must recertify his or her continued eligibility for the Lifeline program within 60 days and to inform the subscriber that the failure to timely recertify will result in the subscriber's de-enrollment from the Lifeline program.[3] If the subscriber fails to recertify as required by the 60-day deadline set forth in section 54.405(e)(4) of the Commission's rules, USAC de-enrolls the subscriber as required under the rules.[4]

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[1] *See* 47 CFR § 54.410(f). The eligibility criteria for the Lifeline program are outlined in 47 CFR § 54.409.

[2] Lifeline subscriber recertifications are conducted by USAC using the National Verifier. *See* USAC, *Recertification*, https://www.usac.org/lifeline/national-verifier/recertification/(last visited May 30, 2023). All Lifeline service providers must still complete FCC Form 555 each year to report the annual results of the recertification process, including data accuracy certifications; *see* USAC, *Annual Filings* (FCC Form 555), https://www.usac.org/lifeline/rules-and-requirements/forms/annual-filings/#555 (last visited May 30, 2023).

[3] *See* 47 CFR § 54.405(e)(4).

[4] *See id.*

3. USAC mailed the letters at issue from May 4, 2023 through May 8, 2023 to a limited number of Lifeline subscribers. In early May 2023, USAC learned that, due to a system error, these letters incorrectly provided what resulted in an approximately 80-day recertification deadline, rather than the 60-day recertification deadline required under the Lifeline program rules.[5] Some of the Lifeline subscribers who received the USAC letters at issue *have* already recertified.[6] Other Lifeline subscribers who received the USAC letters at issue may rely, however, on the incorrect recertification deadline in USAC's letters, which is beyond the 60-day recertification deadline in the rules.

III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.[7] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[8] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[9] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[10]

5. We find that good cause exists to grant the impacted Lifeline subscribers a limited one-time waiver of the 60-day recertification deadline set forth in section 54.405(e)(4) of the Commission's rules and to allow these subscribers, if necessary, to recertify by the deadline indicated in the USAC recertification letters. This waiver relief is in the public interest and is consistent with the Bureau's prior waiver of the 60-day recertification deadline under similar circumstances where there was a USAC system error that generated letters providing incorrect deadlines.[11]

6. We find first that it is reasonable for the impacted Lifeline subscribers to rely on the approximately 80-day deadline provided in the inaccurate recertification letters sent by USAC. We do not expect Lifeline subscribers to be sufficiently familiar with the Commission's recertification and de-enrollment rules to know the applicable response deadlines or to be able to identify deadlines that are inconsistent with those set out in the Commission's rules. In addition, we do not believe de-enrollment would be appropriate for subscribers who waited until more than 60 days from USAC's letter to recertify eligibility. The public interest would not be served if these Lifeline subscribers were de-enrolled because of their reliance on an incorrect USAC-provided deadline that resulted from a USAC system error that was beyond these subscribers' control.

7. The limited, one-time waiver relief we provide in this Order applies to those Lifeline subscribers who received a USAC recertification letter with an incorrect 80-day deadline, whose 60-day recertification deadline under the rules has passed, but who have already recertified by or still have time to recertify before the incorrect 80-day USAC deadline. This limited waiver also applies to the Lifeline

[5] After learning of this issue, USAC corrected the system error to ensure that, going forward, USAC recertification letters provide the correct 60-day recertification deadline.

[6] Based on USAC data, approximately 22,000 subscribers were sent a letter with the wrong recertification deadline; and as of May 15, 2023, approximately 1,200 of these impacted subscribers had already timely recertified by the deadline under the rules.

[7] 47 CFR § 1.3.

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

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

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

[11] *See Lifeline and Link Up Reform and Modernization*, WC Docket No. 17-287, Order, 34 FCC Rcd 9888, 9890-9891, paras. 10-11 (WCB 2019) (granting one-time waiver to a limited number of Lifeline subscribers who received incorrect information about the deadline for recertifying their eligibility for the Lifeline program).

subscribers who received a USAC recertification letter with an incorrect 80-day deadline but whose 60-day deadline and the 80-day deadline in the USAC letter have not yet passed. We conclude it is appropriate to provide this latter group with waiver relief even though the 60-day deadline in the Commission's rules has not passed because doing so would provide the same relief to all of the impacted subscribers. In addition, sending these subscribers revised notices with a corrected deadline would likely cause consumer confusion. Further, for some subscribers in this latter group, a revised notice would not arrive in time to give the subscriber a reasonable amount of time within which to recertify by the 60-day deadline.[12]

8. Consistent with the limited waiver we grant in this Order, we direct USAC to keep open in its systems the impacted Lifeline subscribers' respective recertification windows until the deadline set forth in the USAC recertification letters to those subscribers. If an impacted Lifeline subscriber fails to recertify by the deadline indicated in his or her recertification letter from USAC, that subscriber then must be de-enrolled consistent with section 54.405(e)(4) of the Lifeline rules.

9. In the specific circumstances present here, we do not believe that this temporary waiver creates a risk of waste, fraud, or abuse because the facts justifying the waiver stem from a USAC system error and were not the result of fraudulent or incorrect information provided by the eligible telecommunications carriers receiving disbursements for these subscribers. Additionally, the subscribers impacted by this waiver must still ultimately complete their recertifications or be de-enrolled from the Lifeline program.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1-4 of and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.405(e)(4) of the Lifeline program rules is waived to the limited extent provided herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

[12] USAC projects that it will take approximately one week to prepare and send corrected notices, and the 60-day deadline for some of these subscribers is in early June.

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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

DA 23-461
Released: May 30, 2023

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS SERVICES AS PART OF A TECHNOLOGY TRANSITION

WC Docket No(s). 23-155

Comments Due: June 14, 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 30, 2023**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s),

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] *See* 47 CFR § 63.71(f)(1) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day… unless the Commission has notified the applicant that the grant will not be automatically effective."). *See also* 47 CFR § 63.71(f)(2)(i) (stating that "[a]n application to discontinue, reduce, or impair an existing retail service as part of a technology transition, as defined in § 63.60(i), may be automatically granted… if: The applicant provides affected customers with the notice required under paragraph (a)(6) of this section, and the application contains the showing or certification described in § 63.602(b)").

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 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 **June 14, 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 445 12th Street, S.W., 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

[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*.

paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

People with Disabilities: 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), (888) 835-5322 (tty).

For further information, please see the contacts for the specific discontinuance proceeding you are interested in as listed in the Appendix. The tty number is (888) 835-5322. 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): CenturyLink of Florida, Inc.**
WC Docket No. 23-155, Comp. Pol. File No. 1843
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-155%22))
Affected Service(s) – legacy voice service
Service Area(s) – Cape Coral, Cypress Lake, and North Naples Florida
Authorized Date(s) – on or after June 30, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

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

In the Matter of	)	
	)	
G.I.G., Inc.	)	Facility ID No. 26041
	)	NAL/Acct. No. 202341420002
For License to Cover, Renewal Application, and	)	FRN: 0005056585
Special Temporary Authority	)	LMS File Nos. 0000176044, 0000110806,
Low Power Television Station	)	0000196169, and 0000195312
KCPO-LP, Sioux Falls, SD	)	
	)	

FORFEITURE ORDER

Adopted: May 31, 2023 **Released: May 31, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of seven hundred fifty dollars ($750) to G.I.G., Inc. (Licensee), licensee of low power television (LPTV) station KCPO-LP, Sioux Falls, South Dakota (KCPO or Station). We find that the Licensee willfully violated section 74.788[1] of the Commission's rules (Rules) by failing to timely file a license to cover application for the Station, and willfully and repeatedly violated section 73.1745 of the Rules and section 301 of the Communications Act of 1934, as amended (the Act),[2] by engaging in unauthorized operation.

II. BACKGROUND

2. KCPO-LP was a former analog low power television (LPTV) station. The Station, like all other analog stations, was required to cease analog operations by 11:59 p.m. on July 13, 2021.[3] On

[1] *See* 47 CFR § 74.788 (2022). As noted in the *NAL*, effective October 24, 2022, 47 CFR § 74.788 of the Commission's rules was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598 of the Rules. *See G.I.G., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-46, 2023 WL 345357 at 1, n.2 (MB Jan. 19, 2023) (*NAL*); 87 FR 58200, Oct. 24, 2022; *In the Matter of Amend. of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, FCC 22-58 (July 13, 2022); 47 CFR § 74.780 (bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the violation at issue occurred, 47 CFR § 74.788 was in effect; however, to the extent necessary we also find that the Licensee violated 47 CFR § 73.3598.

[2] *See* 47 CFR § 73.1745 and 47 U.S.C. § 301.

[3] *See* 47 CFR § 74.788(a) (2022); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015). In that decision, the Commission extended the LPTV digital transition date and all valid digital construction permit expiration dates for analog stations until 12 months following the completion of the 39-month post-Incentive Auction transition period, or 51 months from the completion of the Incentive Auction and the release of the *Closing and Channel Reassignment Public Notice*. *Id. See Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release

(continued….)

March 31, 2020, the Station filed a construction permit to flash-cut its analog operations to digital operations on its licensed analog channel 26.[4] That application was granted on April 20, 2020. Pursuant to Commission rules, the Station was assigned a construction permit expiration date of July 13, 2021.[5] On April 28, 2021, the Station was granted an extension of its construction permit to January 10, 2022.[6] In the CP Extension, Licensee represented that construction of the Station had not been completed and laid out a timeline for completing construction. No subsequent request for tolling was filed. On December 1, 2021, G.I.G. filed an application for license renewal.[7] In that application G.I.G. certified that the Station was operational.

3. As part of an investigation by the Video Division relating to the Station's operational history, Licensee revealed that it had in fact commenced digital operations pursuant to the Digital CP on April 21, 2020.[8] On July 11, 2022, the Licensee filed a License Application and requested waiver of all applicable rules and grant of the application.[9] On July 29, 2022, Licensee filed a request for silent authority notifying the commission that the Station went silent on July 27, 2022 due to the loss its "site."[10] In addition, the Licensee filed a request for special temporary authority to commence operations from a new location while it finalizes a construction permit to move to the proposed site on a permanent basis.[11] The License Application, Renewal Application, Silent STA, and Engineering STA all remain pending.[12]

4. On January 19, 2023, the Video Division of the Media Bureau (Bureau) issued a *Notice of Apparent Liability for Forfeiture* (*NAL*) in the amount of six thousand five hundred dollars ($6,500)[13] finding that Licensee had failed to timely file a license to cover as required by section 74.788 of the Rules,[14] and as a result of its failure to timely file a license to cover application, had engaged in unauthorized operation for over two years (April 21, 2020 through July 27, 2022), in violation of section

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date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date and expiration date of all analog stations' digital construction permits were set as July 13, 2021. 47 CFR § 74.731. *See e.g., Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

[4] LMS File No. 0000110806 (Digital CP).

[5] *See* 47 CFR § 74.788(a) (2022). *See supra* note 1.

[6] LMS File No. 0000139698.

[7] LMS File No. 0000176044 (Renewal Application).

[8] *See* Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. (May. 20, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (July 5, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (July 11, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (Sept. 14, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (Sept. 22, 2022); Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. (Sept. 26, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (Nov. 4, 2022). All correspondence is on file under LMS main facility page for Facility ID No. 26041.

[9] File No. 0000194735 (License Application).

[10] LMS File No. 0000196169 (Silent STA).

[11] LMS File No. 0000195312 (Engineering STA).

[12] In the *NAL* the Division stated that it would act on the Station's pending applications upon conclusion of the instant forfeiture proceeding. *NAL* at 6, paras. 14-15. The Division also determined that grant of the Renewal Application, when grantable, would be renewed on a short term basis for a period of two years. *Id.* at 6, paras. 13-14.

[13] *Id.* at 4-5, paras 9-11.

[14] *See* 47 CFR § 74.788(a) (2022).

73.1745 of the Rules[15] and section 301 of the Act.[16] The *NAL* gave Licensee thirty days to pay the full amount of the proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture.[17]

5. On March 7, 2023, Licensee filed a response in which it did not dispute that it had violated the Rules and the Act, but requested that we reduce or cancel the proposed forfeiture based on Licensee's claimed inability to pay it.[18] The Response included copies of Licensee's federal tax returns for 2020, 2021, and 2022, in support of this request.[19]

III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,[20] section 1.80 of the Rules,[21] and the Commission's *Forfeiture Policy Statement*,[22] which establish a base forfeiture amount of $3,000 for failure to file a required form,[23] and a base forfeiture amount of $10,000 for construction and operation without an instrument of authorization for the service.[24] In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.[25]

7. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) Federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.[26] Any claim of inability to pay must specifically identify the basis for the claim

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[15] 47 CFR § 73.1745 (prohibiting unauthorized operation).

[16] 47 U.S.C. § 301 (requiring an authorization to transmit a broadcast signal).

[17] *NAL* at 5, para. 17.

[18] Request for Cancellation or Reduction of Forfeiture, from G.I.G., Inc., to FCC Staff, Video Division, Media Bureau, at 1-2 (dated Mar. 7, 2023) (Response).

[19] In its response, Licensee requested that all financial documentation be kept confidential. Response at 2. *See* 47 CFR § 0.459(a)(1) (procedure applicable to filing in non-electronic proceedings); 47 CFR § 0.457d)(1)(i) (listing financial reports submitted by radio or television licensees as materials not routinely made available for public inspection). Licensee did not file a redacted version for the public record. Licensee is directed to file a redacted version within ten (10) business days of the date this Forfeiture Order is issued, or to file an explanation as to why that is not possible. Failure to do so will result in the versions currently in the possession of the Division being placed into the public record.

[20] 47 U.S.C. § 503(b).

[21] 47 CFR § 1.80.

[22] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) *(Forfeiture Policy Statement), recon. denied*, 15 FCC Rcd 303 (1999).

[23] *Id.*; 47 CFR § 1.80(b)(10) n.2. *See also Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para 11 (2011) ("We note that the staff may also issue Notices of Apparent Liability for 'failure to file a required form' as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the 'Act') and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.").

[24] A person, as defined by the Act, must have an authorization from the Commission to operate a broadcast station. *See* 47 U.S.C. § 301.

[25] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

[26] *See NAL* at 6, para. 21.

by reference to the financial documentation submitted.[27] In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.[28] If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.[29]

8. Licensee has provided federal tax return schedules for the years 2020, 2021, and 2022.[30] While these returns show the station did have gross revenues, we find the forfeiture in this case ($6,500), would constitute an excessive percentage of the Station's gross revenue. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,[31] although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.[32] In 2021 and 2022 the financial information provided also showed that the Station operated at a significant loss, one that was multiple times its gross revenue in those years. Nevertheless, ability to pay is just one of the factors considered when determining whether to reduce a forfeiture.[33] Here, Licensee's violations occurred over an extended period of time. Its failure to timely file a license to cover application upon completion of construction of the Station in April 2020 resulted in the Station engaging in unauthorized operation for over two years, in violation of section 73.1745 of the Rules[34] and 301 of the Act.[35] Licensee also engaged in a pattern of failing to fully reply to the Division's inquiries.[36] This resulted in an extensive delay in resolving the Division's investigation[37] that not only

[27] *See Discussion Radio, Inc.,* Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

[28] *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

[29] *Id.*; *but see Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018) (inability to pay is only one of several factors considered, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) support that result).

[30] Licensee also provided its profit and loss statements for years 2020, 2021, and 2022. However, we consider Licensee's tax returns as the most reliable financial information. *See Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (2000) (considering tax returns to be the most reliable financial information provided by licensee, as compared to unaudited cash flow statements and bank summaries).

[31] *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

[32] *See Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a $4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of $75,167, $90,106, and $69,330, but finding amount would pose a financial hardship where licensee lost $345,000 during the same period).

[33] *See Direct TV, LLC et al*, Forfeiture Order, 36 FCC Rcd 12078, 12096, para. 41 (2021) citing 47 U.S.C. § 503(b)(2)(E) (noting that a party's ability to pay is only one factor in the Commission's forfeiture calculation and is not dispositive).

[34] 47 CFR § 73.1745.

[35] 47 U.S.C. § 301.

[36] *See supra* note 7; *NAL* at paras. 5-6.

[37] Licensee also requested extensions of time to respond, which resulted in delays. Email, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (June. 17, 2022) (requesting two-week extension of time to respond until July 5, 2022), only partial response sent by July 5, with supplemental response sent on July 11, 2022; Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (October 25, 2022) (requesting one-week extension of time to respond until November 4, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (February 16, 2023) (requesting two-week extension of time to respond until March 7, 2023). All correspondence is on file under LMS main facility page for Facility ID No. 26041.

created an undue burden on Division staff and resources, but ultimately deprived the public of the service when the Station went silent and its pending applications were not actionable as a result of the investigation and the underlying questions related to the validity of the Station's underlying license.[38] Based on the facts discussed above, we are unwilling to cancel the forfeiture altogether, but find that a reduction in the total forfeiture amount to seven hundred fifty dollars ($750), is appropriate.[39]

9. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully[40] violated section 74.788 of the Rules and willfully and repeatedly[41] violated of section 73.1745 of the Rules and section 301 of the Act.[42] For the reasons set forth above, we find that reducing the forfeiture to seven hundred fifty dollars ($750) is appropriate. We also take this opportunity to warn Licensee that future forfeitures—regardless of its financial circumstances—may not be so significantly reduced if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Commission's rules.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,[43] that G.I.G., Inc. **SHALL FORFEIT** to the United States the sum of seven hundred fifty dollars ($750) for willfully violating section 74.788 of the Commission's rules and willfully and repeatedly violating of section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.[44]

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),[45] or by wire

[38] *See NAL* at 6, para. 13.

[39] *See Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from $7,000 to $4,000 where the proposed forfeiture amount would have constituted approximately 7% of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from $14,000 to $3,400 where the proposed forfeiture would have constituted approximately 11% of the licensee's average gross revenues); *cf Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, paras. 8-9 (2019) (declining to reduce a forfeiture based on a documented inability to pay because the individual "provide[d] no evidence to refute that his conduct was egregious"). We take this opportunity to warn Licensee that future violations—regardless of its financial circumstances—may not be so significantly reduced if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Commission's rules.

[40] 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. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the section 503(b) context. *See Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

[41] Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to sections 312 and 503(b) of the Act).

[42] 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301.

[43] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

[44] 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301.

[45] 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. Below are instructions that payors should follow based on the form of payment selected:[46]

- 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).[47] 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. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Charles Poppen, G.I.G., Inc., P.O. Box 88336, Sioux Falls, South Dakota, 57109, as well as e-mailed to cpoppen@kcpo.tv, and to their counsel: Aaron Shainis, Esq.,

[46] 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.

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

Shainis & Peltzman, Chartered, 850 M Street, N.W., Suite 240, Washington, DC 20036, as well as e-mailed to aaron@s-plaw.com.

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 23-463
Released: May 31, 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 four 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]

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[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	0010406984	0023948573	D08101	Pueblo County, CO	N/A
PDV Spectrum Holding Company, LLC	0010406995	0023948573	D08123	Weld County, CO	N/A
PDV Spectrum Holding Company, LLC	0010413172	0023948573	D08014	Broomfield County, CO	N/A
PDV Spectrum Holding Company, LLC	0010413176	0023948573	D08031	Denver County, CO	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	)	
	)	
Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations (Peach Springs, Arizona)	)	MB Docket No. 23-45
	)	RM-11945
	)	
Application for Construction Permit to Modify Station KIDD(FM), Fort Mohave, Arizona	)	File No. 0000195603
	)	Facility ID No. 762221
	)	

REPORT AND ORDER

Adopted: May 31, 2023 **Released: May 31, 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 ITM, LLC (Petitioner).[1] Petitioner filed Comments. No counterproposals or other comments were received in response to the *Notice*. For the reasons discussed below, we: (1) substitute Channel 287A for vacant Channel 280A at Peach Springs, Arizona; (2) grant the above-captioned hybrid modification application (Application) for Station KIDD(FM), Fort Mohave, Arizona; and (3) modify the license for Station KIDD(FM), Fort Mohave, Arizona to specify operation on Channel 280C2 in lieu of Channel 280A.

II. BACKGROUND

2. The *Notice* proposed the substitution of Channel 287A for vacant Channel 280A at Peach Springs, Arizona to accommodate the hybrid Application requesting the modification of Station KIDD(FM)'s facilities. The hybrid Application proposes to upgrade from Channel 280A to Channel 280C2 at Fort Mohave, Arizona, and modification of the Station KIDD(FM) license to specify operation on Channel 280C2 at Fort Mohave, Arizona. As stated in the *Notice,* Petitioner claims that grant of the proposal will permit Station KIDD(FM) to enhance service to the community of Fort Mohave, Arizona and the surrounding areas.[2]

3. Petitioner filed Comments restating its present intention to promptly construct the KIDD(FM) facilities as set forth in the Application.[3] It states that the Application proposes a significant power increase from 1.0 kW ERP to 26.0 kW ERP. Petitioner reiterates that the implementation of the facilities as set forth in the Application would provide significant enhancement of service to Fort Mohave, Arizona and the surrounding areas.[4] Petitioner claims that grant of the Petition and Application would serve the public interest.

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[1] *See Peach Springs, Arizona*, Notice of Proposed Rule Making, DA 23-186 (MB March 8, 2023) (*Notice*); *see also* 88 FR 16206 (published March 16, 2023).

[2] *See Notice*, para. 2; *see also* Application, Engineering Exhibit at 9.

[3] Comments of ITM, LLC (Petitioner Comments) at 2.

[4] Petitioner Comments at 1.

III. DISCUSSION

4. 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.[5] We find that grant of the hybrid Application is in the public interest because it would enhanced service for Station KIDD(FM), Fort Mohave, Arizona. Accordingly, we: (1) substitute Channel 287A for vacant Channel 280A at Peach Springs, Arizona;[6] (2) grant the KIDD(FM) hybrid Application; and (3) modify the KIDD(FM) license to specify operation on Channel 280C2 in lieu of 280A at Fort Mohave, Arizona.

5. A staff engineering analysis indicates that Channel 287A can be allotted to Peach Springs, Arizona, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of 12.6 km (7.8 miles) northeast of the community.[7] The reference coordinates are 35-33-18 NL and 113-18-02 WL.

6. *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

7. Accordingly, IT IS ORDERED, that the Petition for Rulemaking, filed by ITM, LLC, as amended on February 21, 2023, IS GRANTED.

8. IT IS FURTHER ORDERED, that the hybrid Application for Station KIDD(FM), Fort Mohave, Arizona, filed by ITM, LLC, as amended on February 21, 2023 (FCC File No. 0000195603), IS GRANTED.

9. IT IS FURTHER ORDERED, that the license of station KIDD(FM), Fort Mohave, Arizona, IS MODIFIED to specify operation on Channel 280C2 in lieu of Channel 280A.

10. 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 **July 17, 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	**Channel No.**
Peach Springs, Arizona	287A

11. The window period for filing applications for Channel 287A at Peach Springs, Arizona will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by

[5] 47 U.S.C. § 316(a).

[6] On January 5, 2018, the Audio Division cancelled the license of Station DKEKI, Fac. ID No. 190381, Channel 280A, Peach Springs, Arizona. *See Broadcast Actions,* Report No. 49149, (MB Jan. 10, 2018). Channel 280A at Peach Springs, Arizona is; therefore, considered a vacant allotment resulting from the license cancellation of FM Station DKEKI. *See Various Locations,* Order, DA 23-111 (Aud. Div. Feb. 9, 2023)(reinstating Channel 280A at Peach Springs, Arizona as a vacant FM allotment).

[7] The staff engineering analysis determined that the community of Peach Springs, Arizona does not fall entirely within the 16.2 km uniform terrain circle, but does fall entirely within the 70 dBu contour of a Class A reference facility at the allotment site.

the Commission in a subsequent order.

12. 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).

13. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

14. 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

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 31, 2023 **Released: May 31, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (Renewal Application) filed by Gendreau Broadcast LLC (Gendreau) to renew the license for KCLN(AM), Clinton, Iowa (Station).[1] Also before us are an informal objection (Objection) to the Renewal Application filed by Dave Vickers (Vickers),[2] and Gendreau's response (LOI Response)[3] to a Letter of Inquiry (LOI) that we sent, which requested that Gendreau respond to allegations made in the Objection.[4] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[5] we find Gendreau apparently (1) willfully and repeatedly failed to timely upload or failed to upload required materials to the Station's online public inspection file (OPIF), and failed to include a link to the Station's OPIF on the Station's website in violation of section 73.3526 of the Commission's rules (Rules),[6] (2) willfully made an incorrect certification in the Renewal Application in violation of section 1.17(a)(2) of the Rules,[7] and (3) willfully and repeatedly engaged in unauthorized operation of the Station in violation of Section 301 of the Communications Act of 1934, as amended (Act), and sections 73.1350, 73.1560(a)(1) and (d), and 73.1745(a) of the Rules.[8] Based upon our review of the facts and circumstances before us, we grant in part and otherwise deny the Objection, and propose a monetary forfeiture in the amount of eleven thousand dollars ($11,000).

[1] Application File No. 123955.

[2] Pleading File No. 131267 (Objection).

[3] Letter from Chris Streets, General Manager, KMCN/KCLN Radio, to FCC (dated Mar. 13, 2023) (LOI Response).

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

[5] This *NAL* is issued pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the FCC's rules (Rules). *See* 47 U.S.C. § 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. *See* 47 CFR § 0.283.

[6] 47 CFR § 73.3526.

[7] *Id.* § 1.17(a)(2).

[8] 47 U.S.C. § 301; 47 CFR §§ 73.1350, 73.1560(a)(1) and (d), 73.1635, 73.1745(a).

II. BACKGROUND

2. Gendreau filed the Renewal Application on October 5, 2020. Vickers then filed the Objection. Therein, he alleged that Gendreau (1) had neglected to upload information to the Station's OPIF,[9] (2) had not included links to the Station's OPIF and most recent Equal Employment Opportunity (EEO) Program Report on the Station's website,[10] (3) had falsely certified in the Renewal Application that the Station's OPIF contained the documentation required by the Rules,[11] and (4) had failed to reduce the Station's power at night.[12]

3. Gendreau did not respond to the Objection. Accordingly, we sent the LOI, which requested that they do so. In the LOI Response, Gendreau acknowledged that it had failed to upload information to the Political File Section of the Station's OPIF.[13] Gendreau also stated that it had "had a number of technical issues" with the Station, and provided documentation regarding various repairs.[14] Gendreau indicated that the Station was currently operating "at between 50 and 70 watts 24 hours a day, while we await repairs."[15] According to Gendreau, the Station had either been silent or "well under [its] full broadcasting strength since the end of October 2022."[16] Gendreau stated that it was not aware of any problems "with being over power" since it acquired the Station.[17] Gendreau provided copies of the Station's logs for six dates in 2022 and 2023.[18]

III. DISCUSSION

A. Online Public Inspection File

4. We agree with Vickers that Gendreau has failed to comply with certain requirements related to the Station's OPIF and set forth in section 73.3526 of the Rules.[19] Based on our review of the record, the Station's OPIF, and the Station's website, we conclude that Gendreau (1) failed to timely upload issues/programs list for all four quarters of 2018, and the second quarter of 2019, and has not uploaded any issues/programs lists since,[20] (2) did not upload the LOI and the LOI Response to the Station's OPIF,[21] (3) neglected to upload materials related to a Commission EEO audit to the Station's OPIF,[22] (5) failed to timely upload required information to the Political Files section of the Station's

[9] Objection at 3-6.

[10] *Id*. at 4.

[11] *Id*. at 2, 6.

[12] *Id*. at 6.

[13] LOI Response at 1.

[14] *Id*.

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

[16] *Id*. at 2.

[17] *Id*. Gendreau acquired the Station on March 15, 2018. *See* Consummation Notice, BAL-20171109ACO (filed Mar. 22, 2018).

[18] *Id*. at Attachs.

[19] Objection at 2-6. *See also* 47 CFR § 73.3526.

[20] *See* 47 CFR § 73.3526(e)(12) (requiring that commercial AM and FM broadcast stations upload quarterly issues and programs lists to their OPIFs no later than the tenth day after each quarter).

[21] *See* 47 CFR § 73.3526(e)(10) (requiring commercial broadcast stations to upload material relating to an FCC investigation or complaint to their OPIFs). The LOI reminded Gendreau to upload it and the LOI Response to the Station's OPIF. LOI at 4. Despite this reminder, Gendreau did not upload these documents to the Station's OPIF.

[22] *See* 47 CFR § 73.3526(e)(10). As Vickers notes, Objection at 2, Gendreau received an EEO audit request regarding the Station in June 2019. Gendreau responded to the EEO audit, and the Commission cleared the Station

(continued….)

OPIF,[23] and (6) did not include a link to the Station's OPIF on the Station's website.[24] It is crucial that stations maintain OPIFs that are complete and up to date and link to their OPIFS on their websites because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations. Below, we propose a forfeiture related to these violations. We urge Gendreau to take steps to bring (and keep) the Station's OPIF in compliance, and note that the failure to do so could lead to additional sanctions.

B. Inaccurate Certification

5. We find that, as Vickers alleges,[25] Gendreau made an inaccurate certification in the Renewal Application in response to the item regarding the Station's OPIF. Gendreau was required to certify whether "the documentation required by 47 C.F.R. Section 73.3526 or 73.3527, as applicable, has been uploaded to the station's public inspection file as an when required." Gendreau certified "Yes." As discussed above, however, the Station's OPIF was missing a number of items.

6. We have determined that Gendreau's inaccurate certification violated section 1.17(a)(2) of the Rules, which prohibits applicants from providing material information that is incorrect without a reasonable basis for believing that such information is not incorrect or misleading.[26] Given the state of the Station's OPIF, we hold that Gendreau had no reasonable basis for believing its certification was correct.[27] We do not find, though, that Gendreau made the inaccurate certification with intent to deceive the Commission. Rather, we conclude that Gendreau failed to exercise appropriate diligence in its filings with the Commission. We propose a forfeiture related to this violation.

C. EEO Program Report

7. We reject Vickers' assertion that Gendreau was required to include the Station's EEO Public File Report on the Station's website.[28] While section 73.2080(c)(6) does provide that broadcast stations must annually place in their OPIFs and on their websites an EEO public file report,[29] section 73.2080(d) exempts "station employment units that have fewer than five full-time employees" from this EEO requirement.[30] The Station's employment unit qualifies for this exemption.[31] Accordingly, we find that the absence of an EEO public file report from the Station's website violated no Commission rule.

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by letter in December 2019. The letter instructed Gendreau to upload it and all other EEO audit materials to the Station's OPIF. To date, Gendreau has not done so.

[23] Gendreau has admitted that, between October 29, 2018, and the date of the LOI Response (*i.e.,* March 13, 2023), the Station did "receive political based advertising." LOI Response at 1. Gendreau states that all paperwork was placed inside the Station's physical public file but the Station's General Manager forgot to post the paperwork to the Station's OPIF. *Id*. Gendreau reports that the paperwork has now been uploaded. *Id*. We have verified that this is the case.

[24] *See* 47 CFR § 73.3526(b)(ii) (requiring commercial broadcast stations to provide a link to "the public inspection file hosted on the Commission's website from the home page" of their own websites).

[25] Objection at 2, 6.

[26] 47 CFR § 1.17(a)(2).

[27] We note that the LOI requested that Gendreau explain the basis for this certification. LOI at 2. However, Gendreau did not offer an explanation in the LOI Response.

[28] Objection at 6.

[29] *See* 47 CFR § 73.2080(c)(6).

[30] *Id*. § 73.2080(d).

[31] *See* Application File No. 123591.

D. Non-Conforming Operations

8. We conclude that Gendreau operated the Station at a variance from its licensed daytime and nighttime parameters for more than 30 consecutive days. The Station is licensed to operate at 1 kilowatt during daytime hours, and 91 watts during nighttime hours.[32] Gendreau admits that the Station began operating at between 50 and 70 watts on November 17, 2022, due to a technical issue.[33] Based on the station logs that Gendreau submitted with the LOI Response, it appears these reduced power operations continued through at least March 17, 2023, and may still be occurring.[34]

9. The Station's non-conforming operations contravened section 301 of the Act and sections 73.1350(a), and 73.1745(a) of the Rules, each of which require licensees to operate in accordance with their Commission-granted authorizations.[35] Furthermore, the Station's operation at between 50 and 70 watts violated Section 73.1560(a)(1) of the Rules.[36] That section requires AM stations to maintain their antenna input power "as near as practicable to the authorized antenna input power" and specifies that it "may not be less than 90 percent nor greater than 105 percent of the authorized power."[37] Finally, we note that Gendreau should have requested special temporary authority to operate the Station at a variance from its licensed parameters. Its failure to do so violated section 73.1560(d).[38] We propose a forfeiture related to the Station's non-conforming operations.[39]

10. In contrast, we find there is no substantial and material question of fact regarding whether the Station failed to reduce power at night as its license specifies. While Vickers alleges that the Station had "been failing to reduce power at night" and that "[t]his had been [an] ongoing issue for 'years,'" he offers no evidence to support his allegation.[40] Additionally, Gendreau has indicated that it is "not aware of any problems with being over power" since it acquired the Station in 2018, and has submitted a declaration made under penalty of perjury to support its claim.

E. Proposed Forfeiture

11. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission . . . ."[41] To determine the appropriate forfeiture amount, we must consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of

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[32] *See* Application File No. BL-20020628ACF.

[33] LOI Response at 1-2, and Attachs. The station log for November 17, 2022, states: "At approx[imately] 2:10 pm KCLN started glitching. … Will not function above lowest settings (91 w[atts]) only running at 56 w[atts]."

[34] LOI Response at Attachs. The station log for February 8, 2023, documents operation of the Station at 61 watts. The log for March 7, 2023, indicates the Station was operating at 64.07 watts, and includes a note about plans to repair the wires on the Station's tower on or about March 17, 2023.

[35] 47 U.S.C. § 301; 47 CFR §§ 73.1350(a), 73.1745(a).

[36] 47 CFR § 73.1560(a)(1).

[37] *Id*.

[38] 47 CFR §§ 73.1560(d) (providing that, in the event it becomes technically impossible to operate at authorized power, a station may operate at reduced power for a period of not more than 30 days without specific authority from the FCC, and requiring station to request special temporary authority if reduced power operations will continue for more than 30 days).

[39] We note that, if the Station continues to operate at reduced daytime and nighttime powers, Gendreau must seek special temporary authority to cover the continued non-conforming operations. If it does not, it could be subject to additional sanctions.

[40] Objection at 6.

[41] 47 U.S.C. § 503(b).

culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.[42] The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.[43] Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.[44] We may adjust a forfeiture upward for violations that are egregious, intentional, continuous, and/or repeated, and violations that cause substantial harm or generate substantial economic gain for the violator.[45] We may also adjust a forfeiture upward where there is an ability to pay, or where there is a history of prior violations of FCC requirements.[46]

12. Gendreau apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to timely upload or failing to upload required materials to the Station's OPIF, and by failing to include a link to the Station's OPIF on the Station's website. Section 1.80(b)(10) of the Rules sets forth a base forfeiture of $10,000 for violation of the public file rules. In addition, Gendreau also apparently willfully violated section 1.17(a)(2) of the Rules when it made an inaccurate certification in the Renewal Application regarding the Station's OPIF. The Commission has not established a base forfeiture amount for an inaccurate certification made without intent to deceive. Finally, Gendreau apparently willfully and repeatedly operated the Station at a variance from its licensed parameters without obtaining authorization to do so. Section 1.80(b)(1) establishes a base forfeiture of $3,000 for failure to file required forms or information. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the guidelines, we propose a total forfeiture in the amount of $11,000.

F. Renewal Application

13. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[47] Section 309(k) requires grant of a renewal application if we find that, with respect to the station, during the preceding term of its license: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.[48] If such a finding cannot be made, Section 309(k) provides that the license renewal application is to be designated for a trial-type hearing pursuant to Section 309(k) of the Act.[49]

14. In this case, Gendreau failed to timely upload materials to the Station's OPIF, failed to upload other materials to the Station's OPIF, failed to include a link to the Station's OPIF on the Station's website, operated the Station at a variance from its licensed parameters without authorization to do so, and made an inaccurate certification in the Renewal Application about the Station's OPIF. We find that Gendreau's apparent violations of the Rules do not constitute "serious violations" under section 309(k) of the Act. In addition, we find no evidence of violations that, when considered together, constitute a pattern of abuse. Further, we find that the Station served the public interest, convenience, and necessity during the subject license term.

15. Based on these findings, we do not conclude that designation of the Renewal Application for evidentiary hearing is warranted here, particularly in light of the forfeiture proposed herein.

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[42] *Id*. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

[43] 47 CFR § 1.80(b)(10).

[44] *Id*. at Table 3.

[45] *Id*.

[46] *Id*.

[47] 47 U.S.C. § 309.

[48] *Id*. § 309(k)(1).

[49] *Id*. § 309(k)(3).

IV. ORDERING CLAUSES

16. **IT IS ORDERED** that the Informal Objection filed by Dave Vickers (Pleading File No. 131267) on January 14, 2021, **IS GRANTED IN PART AND OTHERWISE DENIED**.

17. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,[50] that Gendreau Broadcast LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of eleven thousand dollars ($11,000) for its apparent willful and repeated violations of section 301 of the Communications Act of 1934, as amended, and sections 73.1350, 73.1560(a)(1) and (d), 73.1745, and 73.3526 of the Commission's rules,[51] and its apparent willful violation of section 1.17(a)(2) of the Commission's rules.[52]

18. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[53] that, within thirty (30) days of the release date of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture,* Gendreau Broadcast LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. 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), 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:

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- 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.

[50] *Id.* § 503(b); 47 CFR §§ 0.283, 1.80.

[51] 47 U.S.C. §301; 47 CFR §§ 73.1350, 73.1560(a)(1) and (d), 73.1745, 73.3526.

[52] 47 CFR § 1.17(a)(2).

[53] *Id.* § 1.80.

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.

20. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554. 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.

21. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.[54] 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, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A courtesy copy emailed to Heather.Dixon@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.

22. **IT IS FURTHER ORDERED** that, pursuant to Section 73.3526 of the Commission's Rules,[55] Gendreau Broadcast LLC shall upload a copy of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* to the OPIF of KCLN(AM), Clinton, Iowa.

[54] *Id*. §§ 1.16, 1.80(g)(3).

[55] *Id*. § 73.3526.

23. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Gendreau Broadcast LLC, Attn: Brad Gendreau, 5759 Riverview Rd, Thomson, IL 61285.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 31, 2023 **Released: May 31, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (Renewal Application) filed by Gendreau Broadcast LLC (Gendreau) to renew the license for KMCN(FM), Clinton, Iowa (Station).[1] Also before us are an informal objection (Objection) to the Renewal Application filed by Dave Vickers (Vickers),[2] and Gendreau's response (LOI Response)[3] to a Letter of Inquiry (LOI) that we sent, which requested that Gendreau respond to allegations made in the Objection.[4] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[5] we find Gendreau apparently (1) willfully and repeatedly violated section 73.3526 of the Commission's rules (Rules) by failing to timely upload or failing to upload required materials to the Station's online public inspection file (OPIF), and failing to include a link to the Station's OPIF on the Station's website,[6] and (2) willfully made an incorrect certification in the Renewal Application in violation of section 1.17(a)(2) of the Rules.[7] Based upon our review of the facts and circumstances before us, we grant in part and otherwise deny the Objection, and propose a monetary forfeiture in the amount of eight thousand dollars ($8,000).

II. BACKGROUND

2. Gendreau filed the Renewal Application on October 5, 2020. Vickers then filed the Objection. Therein, he alleged that Gendreau (1) had failed to upload information to the Station's OPIF,[8] (2) had failed to include links to the Station's OPIF and most recent Equal Employment Opportunity

[1] Application File No. 123953.

[2] Pleading File No. 131262 (Objection).

[3] Letter from Chris Streets, General Manager, KMCN/KCLN Radio, to FCC (dated Mar. 13, 2023) (LOI Response).

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

[5] This *NAL* is issued pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the FCC's rules (Rules). *See* 47 U.S.C. § 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. *See* 47 CFR § 0.283.

[6] 47 CFR § 73.3526.

[7] *Id.* § 1.17(a)(2).

[8] Objection at 3-6.

(EEO) Program Report on the Station's website,[9] and (3) falsely certified in the Renewal Application that the Station's OPIF contained the documentation required by the Rules.[10]

3. Gendreau did not respond to the Objection. Accordingly, we sent the LOI, which requested that they do so. In the LOI Response, Gendreau acknowledged that it had failed to upload information to the Political Files section of the Station's OPIF.[11]

III. DISCUSSION

A. Online Public Inspection File

4. We agree with Vickers that Gendreau has failed to comply with certain requirements related to the Station's OPIF and set forth in section 73.3526 of the Rules.[12] Based on our review of the record, the Station's OPIF, and the Station's website, we conclude that Gendreau (1) failed to timely upload issues/programs list for all four quarters of 2018, and the second quarter of 2019, and has not uploaded any issues/programs lists since,[13] (2) did not upload the LOI and the LOI Response to the Station's OPIF,[14] (3) neglected to upload required information to the Political Files section of the Station's OPIF,[15] and (4) did not include a link to the Station's OPIF on the Station's website.[16] It is crucial that stations maintain OPIFs that are complete and up to date, and link to their OPIFS on their websites because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations. Accordingly, below, we propose a forfeiture related to these violations. We urge Gendreau to take steps to bring (and keep) the Station's OPIF in compliance, and note that the failure to do so could lead to additional sanctions.

B. Inaccurate Certification

5. We find that, as Vickers alleges,[17] Gendreau made an inaccurate certification in the Renewal Application in response to the item regarding the Station's OPIF. Gendreau was required to certify whether "the documentation required by 47 C.F.R. Section 73.3526 or 73.3527, as applicable, has been uploaded to the station's public inspection file as an when required." Gendreau certified "Yes" in response to this item. As discussed above, though, the Station's OPIF was missing a number of items.

6. We have determined that Gendreau's inaccurate certification violated section 1.17(a)(2) of the Rules, which prohibits applicants from providing material information that is incorrect without a

[9] *Id*. at 4.

[10] *Id*. at 2, 6.

[11] LOI Response at 1.

[12] Objection at 2-6. *See also* 47 CFR § 73.3526.

[13] *See* 47 CFR § 73.3526(e)(12) (requiring that commercial AM and FM broadcast stations upload quarterly issues and programs lists to their OPIFs no later than the tenth day after each quarter).

[14] *See* 47 CFR § 73.3526(e)(10) (requiring commercial broadcast stations to upload material relating to an FCC investigation or complaint to their OPIFs). The LOI reminded Gendreau to upload it and the LOI Response to the Station's OPIF. LOI at 4. Despite this reminder, Gendreau did not upload these documents to the Station's OPIF.

[15] Gendreau has admitted that, between October 29, 2018, and the date of the LOI Response (*i.e.,* March 13, 2023), the Station did "receive political based advertising." LOI Response at 1. Gendreau states that all paperwork was placed inside the Station's physical public file but the Station's General Manager forgot to post the paperwork to the Station's OPIF. *Id*. We note that, while Gendreau reports that the paperwork has now been uploaded, the Political Files section of the Station's OPIF remains empty.

[16] *See* 47 CFR § 73.3526(b)(ii) (requiring commercial broadcast stations to provide a link to "the public inspection file hosted on the Commission's website from the home page" of their own websites).

[17] Objection at 2, 6.

reasonable basis for believing that such information is not incorrect or misleading.[18] Given the state of the Station's OPIF, we hold that Gendreau had no reasonable basis for believing its certification was correct.[19] We do not find, though, that Gendreau made the inaccurate certification with intent to deceive the Commission. Rather, we conclude that Gendreau failed to exercise appropriate diligence in its filings with the Commission. Accordingly, we propose a forfeiture related to this violation.

C. EEO Program Report

7. We reject Vickers' assertion that Gendreau was required to include the Station's EEO public file report on the Station's website.[20] While section 73.2080(c)(6) does specify that broadcast stations must annually place in their OPIFs and on their websites an EEO public file report,[21] section 73.2080(d) exempts "station employment units that have fewer than five full-time employees" from this EEO requirement.[22] Gendreau has certified that the Station's employment unit qualifies for the exemption.[23] Accordingly, we find that the absence of an EEO public file report from the Station's website violated no Commission rule.

D. Proposed Forfeiture

8. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission . . . ."[24] To determine the appropriate forfeiture amount, we must consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.[25] The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.[26] Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.[27] We may adjust a forfeiture upward for violations that are egregious, intentional, continuous, and/or repeated, and violations that cause substantial harm or generate substantial economic gain for the violator.[28] We may also adjust a forfeiture upward where there is an ability to pay, or where there is a history of prior violations of FCC requirements.[29]

9. Gendreau apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to timely upload or failing to upload required materials to the Station's OPIF, and by failing to include a link to the Station's OPIF on the Station's website. Section 1.80(b)(10) of the Rules sets forth a base forfeiture of $10,000 for violation of the public file rules. Gendreau also apparently willfully violated section 1.17(a)(2) of the Rules when it made an inaccurate certification n the Renewal

[18] 47 CFR § 1.17(a)(2).

[19] We note that the LOI requested that Gendreau explain the basis for this certification. LOI at 2. However, Gendreau did not offer an explanation in the LOI Response.

[20] Objection at 6.

[21] *See* 47 CFR § 73.2080(c)(6).

[22] *Id*. § 73.2080(d).

[23] *See* Application File No. 123591.

[24] 47 U.S.C. § 503(b).

[25] *Id*. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

[26] 47 CFR § 1.80(b)(10).

[27] *Id*. at Table 3.

[28] *Id*.

[29] *Id*.

Application regarding the Station's OPIF. The Commission has not established a base forfeiture amount for an inaccurate certification made without intent to deceive. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the guidelines, we propose a total forfeiture in the amount of $8,000.

E. Renewal Application

10. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[30] Section 309(k) requires grant of a renewal application if we find that, with respect to the station, during the preceding term of its license: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.[31] If such a finding cannot be made, Section 309(k) provides that the license renewal application is to be designated for a trial-type hearing pursuant to Section 309(k) of the Act.[32]

11. In this case, Gendreau failed to timely upload materials to the Station's OPIF, failed to upload other materials to the Station's OPIF, failed to include a link to the Station's OPIF on the Station's website, and made an inaccurate certification in the Renewal Application about the Station's OPIF. We find that Gendreau's apparent violations of the Rules do not constitute "serious violations" under section 309(k) of the Act. In addition, we find no evidence of violations that, when considered together, constitute a pattern of abuse. Further, we find that the Station served the public interest, convenience, and necessity during the subject license term.

12. Based on these findings, we do not conclude that designation of the Renewal Application for evidentiary hearing is warranted here, particularly in light of the forfeiture proposed herein.

IV. ORDERING CLAUSES

13. **IT IS ORDERED** that the Informal Objection filed by Dave Vickers (Pleading File No. 131262) on January 14, 2021, **IS GRANTED IN PART AND OTHERWISE DENIED**.

14. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,[33] that Gendreau Broadcast LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of eight thousand dollars ($8,000) for its apparent willful and repeated violations of section 73.3526 of the Commission's rules,[34] and its apparent willful violation of section 1.17(a)(2) of the Commission's rules.[35]

15. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[36] that, within thirty (30) days of the release date of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture,* Gendreau Broadcast LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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), or by wire

[30] 47 U.S.C. § 309.

[31] *Id*. § 309(k)(1).

[32] *Id*. § 309(k)(3).

[33] *Id*. § 503(b); 47 CFR §§ 0.283, 1.80.

[34] 47 CFR § 73.3526.

[35] *Id*. § 1.17(a)(2).

[36] *Id*. § 1.80.

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:

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- 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.

17. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554. 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.

18. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.[37] 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, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A courtesy copy emailed to Heather.Dixon@fcc.gov will assist in processing the response.

[37] *Id.* §§ 1.16, 1.80(g)(3).

- 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.

19. **IT IS FURTHER ORDERED** that, pursuant to Section 73.3526 of the Commission's Rules,[38] Gendreau Broadcast LLC shall upload a copy of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* to the OPIF of KMCN(FM), Clinton, Iowa.

20. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Gendreau Broadcast LLC, Attn: Brad Gendreau, 5759 Riverview Rd, Thomson, IL 61285.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[38] *Id*. § 73.3526.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6208280
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: June 1, 2023 **Released: June 1, 2023**

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

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider, and we deny Complainant's complaint.

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

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[1] *See* Informal Complaint No. 6208280 (filed May 9, 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.

3. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.[6] Pursuant to our rules, we notified Clear Rate of the complaint.[7] Clear Rate responded to the complaint, stating that authorization was received and confirmed through a third-party verification (TPV) recording.[8] We have reviewed the TPV recording Clear Rate submitted with its response and find that the TPV complies with the verification requirements in the slamming rules.[9] Therefore, we conclude that Clear Rate's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.[10]

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

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

FEDERAL COMMUNICATIONS COMMISSION

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

[6] *See* Informal Complaint No. 6208280.

[7] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id*. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[8] *See* Clear Rate Response to Informal Complaint No. 6208280 (filed May 12, 2023).

[9] *See* 47 CFR § 64.1120(c)(3)(iii).

[10] *See id.* § 64.1100(e). If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id*. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-468
Released: June 1, 2023

FCC SOLICITS NOMINATIONS FOR RECHARTERED NORTH AMERICAN NUMBERING COUNCIL WORKING GROUP MEMBERSHIP

WC Docket No. 23-1

In anticipation of the charter renewal of the North American Numbering Council (NANC or Council), after appropriate consultation with the General Services Administration, in this Public Notice, the Wireline Competition Bureau of the Federal Communications Commission (FCC or Commission) announces that, consistent with the Federal Advisory Committee Act,[1] Chairwoman Jessica Rosenworcel has identified the working groups that will assist the Council in carrying out its work during the two-year term of its anticipated renewed charter, estimated to run from September 2023 to September 2025. The working groups are as follows:

- *Numbering Administration Oversight Working Group (NAOWG)*
- *Call Authentication Trust Anchor (CATA) Working Group*
- *Toll-Free: Future Utilization of Numbers Working Group*
- *Internet of Things Numbering Usage Working Group*

The Numbering Administration Oversight Working Group, which is a permanent, standing working group assisting the NANC in its numbering administrator oversight responsibilities, will work on issues relating to the North American Numbering Plan Administrator and the North American Numbering Plan Billing and Collection Agent.

The remaining working groups are issue-specific and will lapse at the conclusion of their assigned work. Additional issue-specific working groups may be formed as needs dictate. **In addition to participation by NANC members on the Working Groups, the Commission also welcomes participation by parties that are not NANC members but have an interest in specific issues in a working group.**

Interested parties should submit nominations for NANC working group membership to the Commission no later than June 22, 2023. Procedures for submitting nominations are set forth below.

WHO MAY APPLY FOR WORKING GROUP MEMBERSHIP AND OBLIGATIONS OF MEMBERS

The Commission seeks applications for working group membership from every sector of the telecommunications industry, as well as members representing regulators, standards bodies, and consumers. Individuals may also apply for membership in their individual capacities. The Commission is particularly interested in members with expertise and interest in numbering policies, including expertise in network operations and network engineering, representing the following:

[1] 5 U.S.C. § 10.

- Wireline and wireless telecommunications service providers of all sizes, including small and mid-size providers;
- Interconnected Voice over Internet Protocol and other IP-enabled service providers;
- Cable service providers;
- Independent network builders and networking equipment installers;
- Other entities involved in deploying broadband;
- Industry trade and standards associations;
- State, local, and Tribal government regulators and telecommunications officials;
- Consumer and community organizations;
- Telecommunications equipment manufacturers; and
- Other stakeholders and interested parties with relevant experience.

The Commission will select members to balance the expertise and viewpoints that are necessary to effectively address the issues to be considered by the working groups. Members will be appointed either as representatives of their organizations, or in their individual capacities as Special Government Employees (SGEs), and the application requirements for each of those categories are described below. All organizational and individual members appointed to the Council's working groups are subject to an ethics review by the Commission's Office of General Counsel.

Applicants possessing expertise or perspectives of interest to the working group who have requested to serve on a working group in an individual capacity as an SGE shall be eligible only if they are not federally registered lobbyists. SGEs are subject to a variety of restrictions under the conflict of interest statutes, 18 U.S.C. § 203 et seq., and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635. SGEs must file confidential employee financial disclosure reports prior to beginning their service and annually thereafter. SGEs will also be subject to ethics restrictions in section 4(b) of the Communications Act, 47 U.S.C. § 154(b), and in the Commission's rules, 47 CFR Part 19 and 5 CFR Parts 3901 and 3902.

All working group members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission and shall promptly report to the Designated Federal Officer any changes in representation during their tenure on the federal advisory committee. Working group members will not be compensated for their service.

In the case of organizational applicants, we encourage such applicants to submit nominations not only for their primary representatives, but for alternate representatives as well. The availability of alternate representatives will facilitate the work of the Council's working groups in the event that the primary representative is unavailable.

Please note this Public Notice is not intended to be the exclusive method by which the Commission will solicit nominations to identify qualified candidates; however, all candidates for membership on the working groups will be subject to the same evaluation criteria.

Diversity, Equity, Inclusion, and Accessibility

Consistent with Executive Order 14035 (June 25, 2021) and other governing law, the Commission values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its federal advisory committees. The Commission's federal advisory committees strive for a membership that reflects the diversity of the American people.

APPLICATION PROCEDURE FOR ORGANIZATIONAL APPLICANTS

All nominations should be submitted to the Commission as soon as possible, but no later than June 22, 2023. All nominations, including the requisite information listed below, should be submitted by e-mail to Christi Shewman, Designated Federal Officer for the North American Numbering Council, at christi.shewman@fcc.gov.

No specific nomination form is required; however, each nomination for a primary representative and/or an alternate must include the following information:

- The name, title, and organization of the nominee;
- The nominee's mailing address, email address, and telephone number;
- A description of the organization's business, including the telecommunications sector or other interests that are relevant to the working group's business, and a statement of the benefit of having the organization represented on the working group;
- A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to a working group. That statement shall include the individual's specific knowledge or expertise that is relevant to the work of the working group;
- A statement by the organization indicating a willingness to have its representative serve on the working group for a two-year term or until the working group is disbanded;
- An acknowledgement that neither the organization nor its representatives will receive reimbursement of travel expenses or payment of honoraria or other compensation from the Commission; and
- A current resume of the nominee.

An organizational applicant nominating a representative to serve on its behalf on a working group must submit a written confirmation by an authorized person (e.g., an official of the organizational applicant) that such organization wants the nominee to serve on its behalf. The nominating official must possess the executive authority or hold a sufficiently high-level position with the organization to select a representative whose actions will be legally binding on the organizational applicant. For example, this confirmation may be in the following format: "I am [insert official's name], the [insert official's title] at the [insert name of organization, e.g., company, government entity, trade association, etc.], with responsibilities for [concise description of position]. My organization would like [insert proposed member's name], who is currently [an employee of/consultant/attorney to the company] to serve as our representative on the working group."

For nominees seeking to represent an entity that is a party to an FCC contract or subcontract or providing services for the benefit of the FCC under contract or subcontract, or in the case of any applicant or nominee who is individually a party to such a contract or providing services for the benefit of the FCC under such a contract, the nomination must include the following:

- A general description of the contract/agreement;
- A description of the product/services that the applicant provides pursuant to the contract/agreement;
- A list of all parties to the contract/agreement;
- The name of the Commission contracting officer (if known); and
- A certification made by the applicant or nominee that the applicant or nominee has provided written notice to the contracting officer and the FCC Manager, Contracts and Purchasing Center, that the applicant or representative nominee, as applicable, has applied for membership on one of the NANC working groups.

In addition, organizational nominees are required to disclose whether they represent clients before the FCC or represent clients in matters that may come before the working group, other than representing the organizational applicant that has nominated the proposed representative for service on the working group. Each nominee shall provide with the application all details of any such representation.

APPLICATION PROCEDURE FOR INDIVIDUALS TO SERVE AS SGE MEMBERS

Nominations should be submitted to the Commission as soon as possible, but no later than June 22, 2023. All nominations, including the requisite statements listed below, should be submitted by e-mail to Christi Shewman, Designated Federal Officer for the North American Numbering Council, at christi.shewman@fcc.gov.

Individuals seeking to serve as Special Government Employee members of the working group should include the following application information:

- Name and title of the applicant;
- Current mailing address, email address, and telephone number;
- A statement summarizing the applicant's qualifications and reasons why the applicant should be appointed to the NANC working group. That statement shall include the individual's specific knowledge or expertise that is relevant to the work of the working group, including a statement that the applicant is not a registered lobbyist (as noted above, financial and other additional disclosures may also be required);
- A statement that the applicant does not have a contractual or other financial agreement (including as a subcontractor) with the Commission;
- An acknowledgement that the individual will not be entitled to receive reimbursement of travel expenses or payment of honoraria or other compensation from the Commission;
- A statement indicating a willingness to serve on the working group for a two-year term or until the working group is disbanded;
- A current resume; and
- A statement that the applicant does not have clients with matters before the FCC or with matters which may come before the Committee.

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) or 202-418-0432 (TTY).

For additional information, please contact Christi Shewman, Designated Federal Officer for the North American Numbering Council, at christi.shewman@fcc.gov.

–FCC–

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

In the Matter of	)	
	)	
Incarcerated People's Communications Services;	)	WC Docket No. 23-62
Implementation of the Martha Wright-Reed Act	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	

ORDER

Adopted: June 1, 2023 **Released: June 1, 2023**

Extended *IPCS Data Collection Public Notice* Reply Comment Date: June 27, 2023
Extended *IPCS Notice* Reply Comment Date: July 12, 2023

By the Chief, Wireline Competition Bureau:

1. By this Order, the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission) grants extensions of time for parties filing reply comments on the *IPCS Notice*[1] and the *IPCS Data Collection Public Notice* in the above-captioned proceeding.[2] The reply comments for the *IPCS Notice* are now due July 12, 2023 and the reply comments for the *IPCS Data Collection Public Notice* are now due June 27, 2023.

2. On March 17, 2023, the Commission released the *IPCS Notice* and *IPCS Order*. In the *IPCS Notice*, the Commission began the process of implementing the Martha Wright-Reed Act[3] and adopting just and reasonable rates and charges for incarcerated people's audio and video communications services (IPCS). In the *IPCS Notice*, the Commission sought comment on how it should interpret the Martha Wright-Reed Act's language to ensure that it is implemented in a manner that fulfills Congress's intent.[4] The filing deadlines were set at May 8, 2023 for initial comments and June 6, 2023 for reply comments.[5]

3. In the *IPCS Order*, the Commission reaffirmed its prior delegation of data collection authority to the Bureau and the Office of Economics and Analytics, and directed them to update and

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[1] *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, Rates for Interstate Inmate Calling Services* Notice of Proposed Rulemaking and Order, WC Docket Nos. 23-62, 12-375, FCC 23-19 (rel. Mar. 17, 2023) (*IPCS Notice* or *IPCS Order*)

[2] *Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People's Communications Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355 (rel. Apr. 28, 2023) (*IPCS Data Collection Public Notice*).

[3] *IPCS Notice* at 2, para. 2; Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or Act).

[4] *IPCS Notice* at 2, para. 2.

[5] *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, Public Notice, DA 23-306 (rel. Apr. 10, 2023).

restructure their most recent data collection as appropriate in light of the requirements of the new statute.[6] On April 28, 2023, the Bureau and the Office of Economics and Analytics released the *IPCS Data Collection Public Notice* seeking comment on proposed instructions and a proposed reporting template for that data collection.[7] Initial comments on those proposals are due June 2, 2023, and reply comments are due June 20, 2023.[8]

4. On May 23, 2023, the Wright Petitioners, Benton Institute for Broadband & Society, Public Knowledge, Stephen A. Raher, United Church of Christ Media Justice Ministry, and Worth Rises (collectively, the Public Interest Parties) filed a motion to extend the reply comment deadline for the *IPCS Notice* by 35 days to July 12, 2023.[9] Noting the overlapping deadlines for comments on both the *IPCS Notice* and the *IPCS Data Collection Public Notice*, movants assert that "[d]eadlines in such close proximity for complicated issues will likely pose certain challenges to some commenters."[10] They posit that a grant of additional time to file reply comments on the *IPCS Notice* would ensure "a thorough and well-developed record, including from stakeholder reply comments in response to the initial comments submitted on May 8, 2023, while avoiding any delay to the data collection that could harm the public interest."[11] The Public Interest Parties also argue that their proposed extension of the reply comment deadline would "allow interested parties to fully evaluate and respond to issues raised in the [rulemaking] comments while also submitting 2023 [Mandatory Data Collection (MDC)] comments."[12]

5. On May 26, 2023, Securus Technologies, LLC (Securus) filed a Response to the Public Interest Parties' Motion for Extension of Time.[13] Securus supports the Public Interest Parties' request for an extension to file reply comments to the *IPCS Notice*, but proposes a four part alternative schedule.[14] Securus proposes a two-week extension to file reply comments to the *IPCS Notice* to June 20, 2023, as well as a one-week extension of the deadlines for filing initial and reply comments to June 9 and June 27, 2023, respectively, in response to the *IPCS Data Collection Public Notice*.[15] It also requests a one-week extension to file comments on the proposed *2023 IPCS Information Collection*[16] to July 10, 2023.[17] Securus agrees that "the close proximity of the current schedule for filing the initial comments on the 2023 MDC and the NPRM reply comments" creates "a substantial challenge for all interested parties to draft and prepare filings on two substantive sets of issues at the same time."[18] It asserts that, rather than

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[6] *IPCS Order* at 33, para. 84.

[7] *IPCS Data Collection Public Notice*.

[8] *Id.* at 1.

[9] The Public Interest Parties, Motion for Extension of Time, WC Docket Nos. 23-62, 12-375 (filed May 23, 2023).

[10] *Id.* at 2 (citing "a 'perfect storm of numerous back-to-back filings'").

[11] *Id.*

[12] *Id.*

[13] Securus Technologies, LLC Response to Public Interest Parties' Motion for Extension of Time, WC Docket Nos. 23-62, 12-375 (filed May 26, 2023) (*Securus Response*).

[14] *Id.* at 1.

[15] *Id.* at 2.

[16] The date to file comments on the information collection related to the *IPCS Data Collection Public Notice* was established as July 3, 2023 by publication of the *IPCS Data Collection Public Notice* in the Federal Register. *See* Federal Communications Commission, Information Collection Being Reviewed by the FCC, 88 Fed. Reg. 27885 (May 3, 2023) (*2023 IPCS Information Collection*).

[17] *Securus Response* at 2. Securus provides no explanation for this request beyond its request for an extension of the upcoming deadlines generally, nor does it explain whether the Commission even has jurisdiction under the Paperwork Reduction Act to extend the comment date associated with *2023 IPCS Information Collection*.

[18] *Id.* at 4.

granting the Public Interest Parties' proposed 35 day extension of the reply comment deadline for the *IPCS Notice*, a shorter extension period is warranted because the issues raised in the *IPCS Notice* "are not so varied and complex as to require an additional five weeks."[19] Securus contends that its request for one-week extensions to file initial responses to the *IPCS Data Collection Public Notice* and the *2023 IPCS Information Collection* is appropriate because they "should not materially impact the timeline for deploying the 2023 MDC but will provide parties some additional time to address the draft instructions in an orderly manner," and that such extensions are "unlikely to materially impact Staff's schedule for collecting and reviewing the data and developing rate caps to meet the timeframe for issuing implementing regulations."[20]

6. Section 1.46 of the Commission's rules provides that "[i]t is the policy of the Commission that extensions of time shall not be routinely granted."[21] Upon review, however, we agree with the Public Interest Parties and Securus that an extension of time will allow parties to provide the Commission with fulsome comments that will facilitate the compilation of a complete record in this proceeding, without causing undue delay to the Commission's implementation of the provisions of the Martha Wright-Reed Act. We likewise agree with Securus that a one-week extension of the deadline to submit reply comments to the *IPCS Data Collection Public Notice* would allow parties to craft more thoughtful responses without impacting the Commission's ability to meet the statutory requirement that it promulgate final regulations necessary to implement the Martha Wright-Reed Act no later than 24 months after the enactment of that Act.[22]

7. We do not, however, extend the filing deadlines for the initial comments to the *IPCS Data Collection Public Notice* and the comments on the *2023 IPCS Information Collection*. The information to be collected will be critical to the Commission's implementation of the Martha Wright-Reed Act. Due to the time necessary to evaluate public comment on the *IPCS Data Collection Public Notice* and the proposed information collection, as well as the time to receive, process, and analyze the data to be collected, a delay in either of these deadlines could jeopardize the Commission's ability to meet its statutory obligations.[23] We therefore decline to grant these requests.

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, and 1.46 that the Motion for Extension of Time filed by the Public Interest Parties on May 23, 2023 IS GRANTED.

9. IT IS ALSO ORDERED, pursuant to sections 0.204, 0.291, and 1.46 of the Commission's rules, 47 CFR §§ 0.204, 0.291, and 1.46 that the Securus Technologies, LLC Response to Public Interest Parties' Motion for Extension of Time filed on May 26, 2023 is GRANTED IN PART and DENIED IN PART.

10. IT IS ALSO ORDERED that the deadline for filing reply comments to the *IPCS Notice* is EXTENDED from June 6, 2023 to July 12, 2023.

11. IT IS ALSO ORDERED that the deadline for filing reply comments to the *IPCS Data Collection Public Notice* is EXTENDED from June 20, 2023 to June 27, 2023.

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

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[19] *Id.* at 3.

[20] *Id.*

[21] 47 CFR § 1.46.

[22] Martha Wright-Reed Act § 3(a).

[23] *Id.*

13. For further information concerning this proceeding, please contact Ahuva Battams, Pricing Policy Division, Wireline Competition Bureau, (202) 418-1565, ahuva.battams@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

PUBLIC NOTICE

Federal Communications Commission
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News Media Information 202-418-0500
Internet: www.fcc.gov
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DA 23-470
Released: June 1, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES PROCEDURES FOR OBTAINING CONFIDENTIAL INFORMATION FOR 2023 ANNUAL ACCESS CHARGE TARIFF FILINGS

WC Docket No. 23-9

By this Public Notice and Protective Order, the Wireline Competition Bureau sets forth the procedures governing the treatment of confidential information submitted by carriers in connection with the July 2023 annual access charge tariff filings.[1]

This year, price cap incumbent local exchange carriers (LECs or carriers) and rate-of-return incumbent LECs subject to sections 61.38, 61.39, and 61.50 of the Commission's rules, must file annual access charge tariffs to be effective July 1, 2023 for filings made on 15-days' notice and July 3, 2023 for filings made on 7-days' notice.[2] Based on past experience, we anticipate that incumbent LECs will request confidential treatment for certain data filed in support of their 2023 annual access charge tariff filing.[3] We therefore provide guidance to carriers and interested parties regarding the procedures they must follow to request access to confidential information filed with the 2023 annual access charge tariff filings.

In the *Tariff Streamlining Order*, the Commission adopted a standard protective order governing the confidential treatment of streamlined tariffs and accompanying material filed pursuant to section 204(a)(3) of the Communications Act of 1934, as amended.[4] Carriers or interested parties seeking access to confidential information filed in this year's annual access charge tariff filing must comply with the protective order contained in the *Tariff Streamlining Order*, as updated and modified herein. Because there is limited time for review before annual access charge tariffs become effective on July 1, 2023 or July 3, 2023, we recommend that carriers and interested parties complete the necessary Declaration ahead of time to expedite obtaining and reviewing confidential information. We provide the Protective Order and Declaration as an Attachment to this Public Notice.

For more information about this Public Notice and Protective Order, please contact Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, Christopher.Koves@fcc.gov.

- FCC -

[1] *July 1, 2023 Annual Access Charge Tariff Filings*, WC Docket No. 23-9, Order, DA 23-386 (WCB-PPD May 11, 2022) (*2023 TRP Order*).

[2] *July 1, 2023 Annual Access Charge Tariff Filings*, WC Docket No. 23-9, Order, DA 23-282 (WCB-PPD Apr.3 , 2023).

[3] *Id.*; *2023 TRP Order*.

[4] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2210-16, paras. 87-95 (1997) (*Tariff Streamlining Order*); *see* 47 U.S.C. § 204(a)(3).

ATTACHMENT

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	)	
	)	

PROTECTIVE ORDER

Adopted: June 1, 2023 **Released: June 1, 2023**

By the Chief, Wireline Competition Bureau:

1. This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information that is privileged or confidential obtained from a Submitting Party. This Protective Order governs the manner in which "Confidential Information," as that term is defined herein, is to be treated. This Protective Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 CFR § 0.442.

2. *Definitions*.

   a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in Paragraph seven.

   b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

   c. Confidential Information. "Confidential Information" means: (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules. Confidential Information includes additional copies of Confidential Information or any notes or other information derived from Confidential Information.

   d. Declaration. "Declaration" means the Appendix to this Protective Order.

   e. Reviewing Party. "Reviewing Party" means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

   f. Submitting Party. "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

   g. Third-Party Interest Holder. "Third-Party Interest Holder" means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information submitted pursuant to this Protective Order.

3. *Claim of Confidentiality*. The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in Paragraph 1 of this Protective Order. 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.[5] The Commission may, *sua sponte* or upon petition, pursuant to 47 CFR §§ 0.459 & 0.461, determine that all or part of the information claimed as "Confidential Information" is not entitled to such treatment.

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 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.[6] 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 FOIA.[7]

5. *Procedures for Claiming Information is Confidential*. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print: "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-Confidential Information submitted to the Commission. To the extent a document contains both Confidential Information and non-Confidential Information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall also submit a redacted version not containing Confidential Information.

6. *Access to Confidential Information*. Confidential Information shall be made available only to Commission staff, Commission consultants and counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, a person designated by the Reviewing Party, and as provided pursuant to paragraph 7. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel, or such other designated person, must execute the appended Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the appended Declaration.

7. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the appended Declaration. This Protective Order does not restrict a Submitting Party or its Counsel from disclosing or reviewing the Submitting Party's own Confidential Information

8. Authorized Representatives shall be limited to:

   a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

[5] *See* 47 CFR § 0.459(a).

[6] *Cf.* 47 CFR §§ 0.459(g), 0.461(i).

[7] *See* 47 CFR §§ 0.459(h), 0.461.

b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding, except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall be prohibited; and

c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

9. *Filing of Declaration*. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the appended Declaration for each Authorized Representative within five (5) business days after the appended Declaration is executed, or by any other deadline that may be prescribed by the Commission.

10. *Procedure for Objecting to the Disclosure of Confidential Information to a Potential Reviewing Party*.[8] 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.[9] 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

11. *Inspection of Confidential Information*. Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice, not to exceed one business day during normal business hours.

12. *Copies of Confidential Information*. The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this

[8] 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.

[9] An objection ordinarily will first be ruled upon by the Wireline Competition Bureau (Bureau). If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the 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.

proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

13. *Use of Confidential Information*. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order or with the prior written consent of the Submitting Party. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

14. *Pleadings Using Confidential Information*. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order, WC Docket No. 22-108"; and

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the appended Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

15. *Courtesy Copies*. Filers are encouraged to email an electronic version of courtesy copies described in this Protective Order to Christopher Koves, Pricing Policy Division, Wireline Competition Bureau, at Christopher.Koves@fcc.gov. Courtesy copies containing Confidential Information must be password protected and the password communicated to Commission staff via telephone or in a separate email. Submissions may be broken into multiple emails when necessary.

16. *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 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 Confidential Information.

17. *Violations of Protective Order*. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall

immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such 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 attorneys 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 at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

18. *Termination of Proceeding*. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any Confidential Information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 11 and 12 of this Protective Order unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

19. *No Waiver of Confidentiality*. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

20. *Additional Rights Preserved*. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary, or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

21. *Effect of Protective Order*. This Protective Order constitutes an order of the Commission and an agreement between the Reviewing Party, executing the appended Declaration, and the Submitting Party.

22. *Authority*. This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), and 47 CFR § 0.457(d).

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief, Wireline Competition Bureau

APPENDIX TO PROTECTIVE ORDER

DECLARATION

In the Matter of	)	
	)	
July 1, 2023	)	WC Docket No. 23-9
Annual Access Charge Tariff Filings	)	
	)	

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that it is my obligation to ensure that there is no disclosure of Confidential Information in my possession or in the possession of those who work for me, except as provided in the Protective Order. I certify that I have verified that there are procedures in place at my firm or office to prevent the unauthorized disclosure of Confidential Information. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(date)_____

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 23-471
Released: June 1, 2023

FCC ANNOUNCES MEETING OF THE NORTH AMERICAN NUMBERING COUNCIL

WC Docket No. 23-1

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,[1] the Federal Communications Commission (FCC or Commission) announces a meeting of the North American Numbering Council (NANC). The meeting will be held **Wednesday, June 28 from 2:00 p.m. until 4:00 p.m. ET**, in person in the Commission Meeting Room of the Federal Communications Commission, 45 L Street, N.E., Washington, D.C. and via the Internet at http://www.fcc.gov/live.

At the June meeting, the NANC will consider and vote on two reports and recommendations from the Numbering Administration Oversight Working Group: (1) the Numbering Administration Performance Review; and (2) the North American Numbering Plan Fund Size Projections and Contribution Factor. The NANC will also hear a report from the Billing & Collection Agent, Welch LLP, and routine status reports from the North American Portability Management, LLC, and the Secure Telephone Identity Governance Authority. The agenda may be modified at the discretion of the NANC Chair and the Designated Federal Officer.

While the meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees will not be required to have an appointment but must otherwise comply with protocols outlined at: https://www.fcc.gov/visit. Additionally, the meeting will be available to the public via live feed from the FCC's web page at http://www.fcc.gov/live. Open captioning will be provided online 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. 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 comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. **Comments to the NANC should be filed in WC Docket No. 23-1.**

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

–FCC –

[1] 5 U.S.C. App. 2.

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 23-472
Released: June 1, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES THE START DATE FOR PERFORMANCE MEASURES TESTING FOR THE RURAL DIGITAL OPPORTUNITY FUND, BRINGING PUERTO RICO TOGETHER FUND, AND THE CONNECT USVI FUND

WC Docket Nos. 10-90, 18-143, 19-126

By this Public Notice, the Wireline Competition Bureau (Bureau) announces January 1, 2024 as the start date for the requirement to begin one year of pre-testing and reporting of speed and latency results for the Bringing Together Puerto Rico Fund Stage 2 and the Connect USVI Fund Stage 2.[1] Testing will begin on January 1, 2025. For the carriers participating in the Rural Digital Opportunity Fund (RDOF),[2] pre-testing will begin on January 1, 2025, and testing will begin on January 1, 2026.[3]

In the Performance Measures Orders, the Commission adopted a uniform framework of performance measures requiring that recipients of high-cost universal service support test their broadband networks for compliance with the appropriate speed and latency metrics and report and certify the results.[4] The testing is necessary to protect ratepayers' investment and ensure that carriers receiving this support deploy networks that meet the performance standards they promised to deliver to rural consumers.[5] Carriers failing to meet the required testing standards will be subject to withholding and/or recovery of universal service support, based on the level of non-compliance.[6]

Carriers must conduct testing according to the Commission's performance measures testing requirements using a Universal Service Administrative Company (USAC)-determined randomly-selected sample of subscriber locations.[7] The population of subscribers from which the sample will be generated

[1] *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order, WC Docket Nos. 18-143, 10-90, 14-58, 34 FCC Rcd 9109 (2019) (*2019 PR-USVI Order*); *see also Uniendo a Puerto Rico Fund and Connect USVI Fund Notice and Filing Requirements and Other Procedures for Stage 2 Fixed Competitive Proposal Process*, Public Notice, WC Docket Nos. 18-143, 10-90, 35 FCC Rcd 218, 220, 252-55, paras. 2, 124-34 (WCB 2020) (*Procedures Public Notice*).

[2] *Rural Digital Opportunity Fund; Connect America Fund*, Order, 35 FCC Rcd 686, 702-04, paras. 31-39 (2020) (*Rural Digital Opportunity Fund Order*); *see also Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, 6086, para. 20 & n.46 (2020) (*Auction 904 Procedures Public Notice*).

[3] All RDOF participants, regardless of authorization year, will begin pre-testing and testing on the same date.

[4] *See Connect America Fund*, Order, WC Docket No. 10-90, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*); *Connect America Fund*, Order on Reconsideration, WC Docket No. 10-90, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*). *See also* 47 CFR § 54.313(a)(6).

[5] *Performance Measures Reconsideration Order,* 34 FCC Rcd at 10110, para. 2.

[6] *Id*. at 10133-38, paras. 65-75; *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67. *See also* 47 CFR § 54.320(d)(2).

is the carrier-provided data for deployed locations in USAC's High Cost Universal Service Broadband portal (HUBB).[8] The size of the sample is based on the number of subscribers in a particular area.[9]

To allow carriers to become accustomed to performance testing, the Commission implemented a pre-testing period that would occur prior to the commencement of each carrier's testing start date.[10] During the pre-testing period, carriers must test the speed and latency of their networks quarterly for a week-long period and submit the results within one week of the end of each quarter of pre-testing.[11] However, no support reductions are assessed during the pre-testing period as long as carriers perform the pre-testing and report their results.[12] Carriers that fail to conduct pre-testing and submit results on time will have five percent of their monthly support payments withheld until they come into compliance.[13]

Additional Information. The Bureau encourages carriers to review all applicable requirements and procedures as set forth in the Commission's rules, the *Performance Measures Order,* and the *Performance Measures Reconsideration Order*. In addition, USAC has made available resources with important information to assist carriers in preparing, timely submitting, and properly filing test results and certifications: https://www.usac.org/high-cost/annual-requirements/performance-measures-testing/.

For additional information on this Public Notice, please contact Divya Shenoy (Divya.Shenoy@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400. For technical questions when submitting data, please contact USAC at hcquestions@usac.org or call (844) 357-0408.

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(Continued from previous page)

[7] *Performance Measures Reconsideration Order,* 34 FCC Rcd at 10139, para. 78.

[8] *First Performance Measures Order*, 33 FCC Rcd at 6522, para. 36.

[9] *Id.* at 6522-24, paras. 36-40; *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10125-28, paras. 43-49.

[10] *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, paras. 78-79.

[11] *Id.* at 10139, para. 78.

[12] *Id*. at 10139, paras. 78-79.

[13] *Id*.

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 23-473
Released: June 1, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE ACQUISITION OF CERTAIN ASSETS OF BROADLIFE COMMUNICATIONS, INC. BY YELLOWHAMMER NETWORKS, LLC

WC Docket No. 23-23

By this Public Notice, the Wireline Competition Bureau (Bureau) grants 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 (the Act), 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, including Rural Digital Opportunity Fund (RDOF) support.[2]

On March 10, 2023, the Bureau released a Public Notice seeking comment on the Application.[3] The Bureau did not receive comments or petitions in opposition to the Application.

Applicants and Description of Transaction

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 RDOF support over ten years to provide service to 7,483 locations in 953 census blocks in

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

[2] Application of BroadLife Communications, Inc. and Yellowhammer Networks, LLC for Consent to Assignment of Domestic Section 214 Authorization, WC Docket No. 23-23 (filed Jan. 13, 2023), 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). Yellowhammer also filed a petition (ETC Petition) requesting designation of Yellowhammer as an eligible telecommunications carrier (ETC) for purposes of receiving the transferred RDOF support, conditioned upon, and limited by, its authorization to receive the transferred support, and is effective only upon such authorization. *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).

[3] *See 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*, WC Docket Nos. 23-23 and 09-197, Public Notice, DA 23-305, at 3-5 (WCB 2023).

[4] Application at 3.

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] Yellowhammer will work with "one or more local partners that will provide sales and customer service support (Local Partners)."[8] 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."[9] Applicants 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.[10] Meridiam Fund III and all its subsidiaries, including Yellowhammer, are managed by Meridiam Infrastructure North America Corporation (Meridiam), a Delaware corporation.[11] Yellowhammer is ultimately controlled by the President of Meridiam, Thierry Déau, a citizen of France.[12]

Pursuant to the terms of the proposed transaction, Yellowhammer will acquire the RDOF obligations and support for the Assigned Census Blocks in Alabama.[13] Applicants state that regarding the Assigned Census Blocks, "Yellowhammer will receive all of the RDOF support BroadLife has received 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."[14]

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.[15]

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[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 et al., Public Notice, DA 22-402, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB/OEA/RBATF Apr. 15, 2022) (*RDOF Public Notice*). We specify that the Assigned Blocks cover all eligible census blocks covered by the Broadlife RDOF award for SAC 259060 (as published by the Commission on its website), regardless of any discrepancy in the list of census blocks in the Application. *See* Results, Long-Form Applicants Spreadsheet at https://www.fcc.gov/auction/904/round-results. 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." *RDOF Public Notice* at 8-9. "Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules. Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs." *Id.*

[6] Application at 3.

[7] *Id.* at 4.

[8] *Id.* at 5.

[9] *Id.*

[10] *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).

[11] Application at 4; Supplement at 2 (Declaration).

[12] Supplement at 2 (Declaration).

[13] Application at 8.

[14] *Id.* at 9.

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

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[16] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[17] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[18]

We further find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a reduction of competition. Neither of the Applicants or their affiliates currently offer domestic telecommunications services,[19] and thus there will be no physical overlap in service areas or reduction in service providers in any markets as a result of the transaction. Applicants state that Yellowhammer has "the necessary managerial and technical experience and requisite financial means to assume the responsibility of deploying RDOF-support voice and broadband service in the Assigned Census Blocks,"[20] and we thus expect no potential harm to existing customers to result from the transaction.

Second, Yellowhammer commits to meeting all public interest and performance obligations associated with the receipt of the transferred support,[21] and the record indicates that Yellowhammer has the technical, financial, and managerial expertise to do so.[22] Upon consummation of this transaction, Yellowhammer will become financially, managerially, and technically obligated to meet all public

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[16] *See, e.g.*, *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, FCC 21-121, at 8, para. 21 (Nov. 22, 2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al*., MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

[17] *See Verizon-TracFone Order* at 8, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

[18] *See Verizon-TracFone Order* at 8, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

[19] Application at 4, 18.

[20] *Id*. at 11.

[21] *See id.* at 2-3, 5, 9, 12-13. The Bureau has provided a summary of the various obligations of authorized RDOF support recipients in prior authorization public notices. As stated in these public notices, the summary is not intended to be comprehensive, and all authorized parties are responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules. *See generally Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, DA 22-402 (WCB Apr. 15, 2022).

[22] *See id.* at 12, 18-19.

interest and performance obligations associated with the receipt of RDOF funding, and we expect that the proposed transaction will not negatively impact these obligations.[23] Applicants affirm 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."[24] Applicants state that Yellowhammer will meet BroadLife's RDOF buildout milestones and RDOF obligations as well as Yellowhammer's ETC obligations.[25] Applicants further state that "Yellowhammer will ensure that Affordable Connectivity Program benefits are made available to all qualifying households in the Assigned Census Blocks."[26] Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.[27] Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.[28] Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.[29]

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."[30] Applicants contend that the proposed transaction is a more beneficial outcome than BroadLife defaulting on its RDOF obligations and the recovery of associated support.[31] Specifically, 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."[32] Thus, Applicants aver 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."[33] Applicants claim that the "collaborative business model" that will be used in connection with this build-out "is similar to several projects that Meridiam has developed in recent years to deploy fiber-to-the-premise ("FTTP") networks in North America and Europe."[34]

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,[35] and accelerating private sector deployment of advanced services is one

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[23] *See id*. at 2-3, 5, 9, 12-13.

[24] *Id.*

[25] *Id.* at 12, 18-19.

[26] *Id.* at 10.

[27] *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

[28] *See id*. at 9237-38, paras. 275-76.

[29] *See id*.

[30] Application at 12.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 13.

[34] *Id*. at 6.

[35] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

of the aims of the Act.[36] In light of the Applicants' commitments to meet all of Licensees' federal high-cost funding obligations[37] and the fact that Applicants are prepared to devote additional capital to accelerate facilities-based service offerings,[38] we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants' compliance with all applicable obligations.[39]

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.[40] Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information 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.

-FCC-

[36] *See Verizon-TracFone Order* at 9, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services")).

[37] Application at 2, 11-12.

[38] *Id*. at 7.

[39] *See CAF Phase II Public*, Notice, 34 FCC Rcd at 5967-71; *RDOF Public Notice* at 1-9 (listing obligations of authorized support recipients).

[40] We direct Applicants to transmit a copy of this Public Notice to the Universal Service Administrative Company. We further direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 23-23 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA No. 23-474

Report No. SAT-01730 **Friday June 2, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-STA-20230522-00121	E S3066	Intelsat License LLC
Special Temporary Authority		
Grant of Authority		Effective Date: 06/01/2023

On June 1, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC for a period of up to 30 days for the Intelsat 40e space station to provide fixed-satellite service in the 18.8-19.3 GHz (space-to-Earth) and 28.6-29.1 GHz (Earth-to-space) frequency bands from the 91.0° W.L. orbital location.

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 23-475
June 2, 2023

GRANT OF WINDSTREAM HOLDINGS II, LLC
PETITION FOR DECLARATORY RULING

IB Docket No. 22-129; File Nos. ISP-PDR-20201021-00010; and
ISP-AMD-20230330-00005

By this Public Notice, the Office of International Affairs (OIA) grants, as conditioned, the petition for declaratory ruling (Petition), as amended,[1] filed by Windstream Holdings II, LLC (Windstream), its members, and its common carrier licensee subsidiaries (together, Petitioners) pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the Act), and section 1.5000(a)(1)

[1] Windstream Holdings II, LLC, et al., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, ICFS File No. ISP-PDR-20201021-00010 (filed Oct. 21, 2020) (Petition). Subsequently, Petitioners filed additional information to supplement and amend the Petition. *See* Windstream Holdings II, LLC, et al., Restated Petition for Declaratory Ruling, ICFS File No. ISP-PDR-20201021-00010 (filed Oct. 26, 2021) (Restated Petition); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Jan. 15, 2021) (January 2021 Supplement) (clarifying information regarding insulated and uninsulated voting interests in Exhibits E through AA of the Petition, and providing revised post-closing ownership charts); Letter from Bruce Karsh, Member of Oaktree WIN, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Oct. 26, 2021) (October 2021 Supplement) (responding to staff inquiries and providing certifications requested by the staff regarding interests to be held in Windstream through four investment funds managed by Oaktree WIN Management, LLC, a newly formed entity); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Feb. 10, 2022) (February 2022 Supplement) (notifying the Commission that the equity interest percentages of certain disclosable interest holders shifted due to investors in Windstream trading Common Units and Special Warrants with both existing and new investors); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed May. 13, 2022) (stating "description of the ownership of Franklin Mutual Advisers LLC ("FMA") in the Restated Petition included an intermediary corporation in FMA's chain of ownership that was removed in July 2021" and that "[t]he change has no effect on the ultimate ownership and control of FMA. In addition, none of the FMA entities require specific approval from the Commission, and following grant of the Restated Petition FMA will no longer have a disclosable interest in Windstream"); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Dec. 21, 2022) (Brookfield Corporation Letter) (providing information on changes in the upstream structure of the indirect passive equity stake that Brookfield Corporation, formerly known as "Brookfield Asset Management Inc.," will hold in Windstream); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Jan. 17, 2023) (January 2023 Supplement) (stating that trading activities resulting from consolidation or transfer of funds within fund families decreased the equity and voting interests of certain disclosable interest holders); Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Mar. 14, 2023) (clarifying specific approvals requested regarding Deutsche Bank entities; certification of statements made in past supplements and a statement regarding the calculation of ownership interests; the place of incorporation of certain entities in the Oaktree ownership structure; and an update regarding one of the funds managed by Oaktree). *See infra* notes 5, 7.

of the Commission's rules, to permit foreign ownership of the controlling U.S. parent, Windstream, to exceed the 25% benchmarks specified in section 310(b)(4) of the Act.[2]

On March 18, 2022, the International Bureau[3] released a public notice seeking comment on the Petition, as amended and IB did not receive comments or oppositions.[4] On February 3, 2023, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), submitted a Petition to Adopt Conditions to Authorizations and Licenses (Committee Petition).[5] On April 27, 2023, Windstream filed a letter stating that it commits, for as long as it is structured as a limited liability company, to monitor its ownership and file with the Commission an annual certification that it is in compliance with the Commission's foreign ownership rules.[6]

Based on our review of the record, we grant the Committee Petition and condition grant of the Windstream Petition, as amended, on compliance by Windstream, its members, and its common carrier subsidiaries with the commitments and undertakings set out in the Windstream LOA and in the Annual

[2] 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1).

[3] On April 11, 2023, the Commission reorganized the International Bureau (IB) into the Space Bureau and the Office of International Affairs. *See* News Release, FCC, *FCC Space Bureau & Office Of International Affairs To Launch Next Week; Public Kickoff Event to Take Place on April 11 at FCC Headquarters* (Apr. 7, 2023), https://www.fcc.gov/document/fcc-space-bureau-office-international-affairs-launches-april-11.

[4] *Windstream Holdings II, LLC Files A Petition for Declaratory Ruling*, *Pleading Cycle Established*, IB Docket No. 22-129, Public Notice, ICFS File No. ISP-PDR-20201021-00010, DA 22-295 (IB Mar. 18, 2022) (*2022 Public Notice*). On March 31, 2023, Petitioners filed an amendment to update the record. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-AMD-20230330-00005 (filed Mar. 31, 2023) (notifying the Commission that Energy Super, an Australian Superannuation fund merged into LGIAsuper, another Australian Superannuation Fund founded in Queensland, and longer requires specific approval. Consequently, Petitioners also seek specific approval for LGIAsuper and LGIAsuper Trustee). IB released an updated Accepted for Filing Public Notice on April 7, 2023. *Non Streamlined International Applications/Petitions Accepted For Filing, Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000)*, Public Notice, Report No. TEL-02264NS, ICFS File No. ISP-AMD-20230330-00005 (OIA Apr. 7, 2023) (*2023 Public Notice*).

[5] National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorizations and Licenses, ICFS File No. ISP-PDR-20201021-00010 (filed Feb. 3, 2023) (citing Letter of Agreement from Tony Thomas, President & Chief Executive Officer Windstream Holdings II, LLC, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division (dated Jan. 18, 2023) (Windstream LOA or LOA). The NTIA filing attaches a copy of the Windstream LOA.

[6] Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 and ICFS File No. ISP-AMD-20230330-00005 (filed Apr. 27, 2023) (Annual Certification Agreement Letter) ("Windstream acknowledges that it is subject to Section 310(b) of the Act, Section 1.5000- 1.5004 of the Commission's rules, and the terms and conditions of its foreign ownership declaratory ruling, including the requirement to obtain prior approval under Section 1.5004 of the Commission's rules. For as long as Windstream is structured as a limited liability company, Windstream commits to monitor its ownership and file with the Commission an annual certification each year, as of the date of grant of the declaratory ruling, stating that it remains in compliance with Section 310(b) of the Act, Sections 1.5000-1.5004 of the Commission's rules, and the terms and conditions of its foreign ownership declaratory ruling. This certification will be filed in accordance with Section 1.16 of the Commission's rules and subscribed to as true under penalty of perjury. Windstream shall file the annual certifications in ICFS File Nos. ISP-PDR20201021-00010 and ISP-AMD-20230330-00005. If Windstream is not in compliance with Section 310(b) of the Act, Sections 1.5000-1.5004 of the Commission's rules, and the terms and conditions of its foreign ownership declaratory ruling, it agrees to notify the Commission within fifteen (15) calendar days after discovery of such non-compliance.").

Certification Agreement Letter filed by Windstream on April 27, 2023, as well as the additional conditions set forth below.[7]

Windstream

Windstream, a Delaware limited liability company that is the successor in interest to Windstream Holdings, Inc., Debtor-in-Possession,[8] acting through its operating subsidiaries, provides voice, data, and transport services on a local and long-haul fiber network currently spanning approximately 150,000 route miles.[9] The Petitioners state that Windstream's consumer and small business segment includes approximately 1.6 million residential and small business customers.[10] In addition, Windstream provides 100 Gbps bandwidth and transport services to wholesale customers, including telecommunications companies, content providers, and cable and other network operators.[11] The Restated Petition states that Windstream's incumbent local exchange carrier subsidiaries (LECs) serve customers in 18 states, while Windstream's competitive LEC subsidiaries serve primarily enterprise and government customers in all 50 states and the District of Columbia.[12] On February 25, 2019, Windstream's predecessor in interest, Windstream Holdings, Inc. (Holdings), filed voluntary petitions for relief for itself and its subsidiaries, and other subsidiaries under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.[13] On April 1, 2020, Holdings filed a plan of reorganization proposing a restructuring, through a two-step transaction, to permit Holdings and its subsidiaries to emerge from bankruptcy "with a deleveraged capital structure and sufficient liquidity to fund the post-emergence business plan."[14]

On May 21, 2020, Holdings and its first lien debtholders (together, Applicants) jointly filed applications for consent to transfer and assign licenses and authorizations held by Windstream Services, LLC (Windstream Services) with the Commission,[15] seeking approval for the proposed two-step process.[16] As part of step one of the process (Step One), Applicants requested the Commission to approve the following transactions pursuant to temporary and limited waivers of sections 1.948, 1.2112,

[7] *Id*.

[8] Restated Petition at 2. *See also* Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. June 26, 2020) (Bankr. Findings of Fact, Conclusions of Law, and Order).

[9] Restated Petition at 2.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

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

[15] *Id.* at 3; *see* Application of Windstream Holdings, Inc., Debtor-in-Possession, Transferor, and Windstream Holdings, Inc., Transferee, for Consent to Transfer of Licenses and Authorizations, WC Docket No. 20-151 (filed May 21, 2020) (Step One Application). According to the January 2021 Supplement, "effective January 1, 2021, Windstream Services II, LLC changed its name to Windstream Services, LLC. All references to Windstream Services II, LLC in the Petition should thus be read as references to Windstream Services, LLC." January 2021 Supplement at 1, n.1.

[16] Restated Petition at 3.

1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules,[17] and 1.2105(b)(2), 1.2107(c), or 1.927(h) of the Commission's rules:[18] the interests held by the existing stockholders of Holdings would be canceled; the company would be reorganized as a Delaware limited liability company; and the creditors who held the first lien debt of Windstream Services, which was the subsidiary of Holdings, would equitize a portion of their debt claims against Holdings and Windstream Services, acquiring 100% of the equity of Windstream with non-U.S. entities and U.S. entities with foreign ownership obtaining rights to acquire additional Common Units, which according to the Restated Petition are voting and uninsulated equity interests,[19] at the completion of step two of the process (Step Two).[20]

The Bankruptcy Court approved the plan of reorganization on June 26, 2020.[21] On August 28, 2020, IB, the Wireline Competition Bureau, and Wireless Telecommunications Bureau granted the Applicants' request to waive sections 1.948, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, subject to conditions, to facilitate Windstream Services' prompt emergence from the bankruptcy process consistent with the Commission's longstanding practice to accommodate federal bankruptcy law when doing so will not unduly interfere with the Commission's public interest obligation under the Act.[22] More specifically, waiver of section 1.5000(a)(1) as part of Step One of the process was granted to enable Holdings' prompt emergence from bankruptcy while preserving the Commission's ability to review and rule on its proposed foreign ownership interests upon emergence from bankruptcy.[23] Therefore, the grants were conditioned upon the filing, no later than 30 days after closing of the transaction authorized by the grant as part of Step One, of a petition for declaratory ruling to exceed the aggregate foreign ownership benchmarks set forth in section 310(b)(4) of the Act.[24] The Office of Economics and Analytics and the Wireless Telecommunications Bureau also granted a waiver of sections 1.2105(c)(2), 1.1207(c), or 1.927(h), as needed, with conditions to facilitate the participation of Windstream Services in the post-auction application process for any Priority Access Licenses won by Windstream Services in Auction 105.[25]

[17] 47 CFR §§ 1.948, 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, 63.24. *See* Application of Windstream Holdings, Inc., Debtor-in-Possession, Transferor, and Windstream Holdings, Inc., Transferee, for Consent to Transfer of Licenses and Authorizations, Petition for Temporary and Limited Waiver, WC Docket No. 20-151, File Nos. ISP-WAV-20200611-00004, ITC-WAV-20200611-00091, et al. at 7-8 (filed June 11, 2020) (Waiver Request).

[18] 47 CFR §§ 1.2105(b)(2), 1.2107(c), 1.927(h). *See* Petition of Windstream Services, LLC, Debtor-In-Possession for Waiver of Section 1.2105(b)(2) of the Commission's Rules, AU Docket No. 19-244 (July 22, 2020) (Auction 105 Major Modification Waiver Petition); Petition of Windstream Services, LLC, Debtor-In-Possession for Waiver of Section 1.2105(b)(2) of the Commission's Rules, AU Docket No. 19-244 (Aug. 27, 2020) (Amendment to Pending Waiver).

[19] Restated Petition at 5-6.

[20] *Id.* at 4-5.

[21] *See* Bankr. Findings of Fact, Conclusions of Law, and Order.

[22] *Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, and Subsidiaries*, WC Docket No. 20-151, Public Notice, 35 FCC Rcd 10076, 10081 (IB, WCB, WTB, OEA 2020) (*2020 Waiver Grant PN*).

[23] *Id.* at 10081.

[24] *Id.* at 10082-83.

[25] *Id.* at 10081-82 .

At Step One, Holdings emerged from bankruptcy on September 21, 2020.[26] With the completion of Step One, the former holders of first lien debt of Holdings, as a group, acquired 100% of the equity of Windstream with foreign entities and U.S. entities with foreign ownership obtaining rights to acquire additional Common Units at the completion of Step Two.[27]

Petitioners state that at Step One, Windstream issued Special Warrants to its investors,[28] and pursuant to section 310(b)(4) of the Act and Commission's rules, Windstream's aggregate foreign ownership remains below the 25% statutory benchmarks.[29] According to the Restated Petition, foreign holders may not exercise the Special Warrants until the Commission grants the Petition.[30]

Petitioners state that, upon completion of the proposed Step Two of the transaction, Windstream would have an aggregate indirect foreign equity interest of 66.29%.[31] According to the Restated Petition, Nexus Aggregator L.P., a Delaware limited partnership, would hold a 49.27% equity interest in Windstream upon closing.[32] Elliott International, L.P. (Elliott International), a Cayman Islands entity, would hold a 69.57% equity interest, as an insulated limited partner, in Nexus Aggregator L.P.[33] Elliott International Limited, a Cayman Islands entity, holds a 99.90% equity interest in Elliott International,[34]

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[26] February 2022 Supplement at 3. Windstream filed *pro forma* assignment notices notifying the Commission of the assignment of its authorizations, wireless licenses, and receive-only earth stations to Windstream's post-bankruptcy structure. Pro Forma Assignment Notice, Windstream Services, LLC, File No. ITC-ASG-20211220-00202 (filed Dec. 20, 2021); Pro Forma Assignment Notice, Windstream Services LLC, File No. 0009266664 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Valor Telecommunications of Texas, LLC, File No. 0009266650 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Windstream NTI, LLC, File No. 0009266661 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Oklahoma Windstream, LLC, File No. 0009266647 (filed Oct. 20, 2020); Pro Forma Assignment Notice, MPX, Inc., File No. 0009266638 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Business Only Broadband, File No. 0009265519 (filed Oct. 20, 2020); Pro Forma Assignment Notice, Windstream D&E Systems, Inc., File No. SES-T/C-20201016-01136 (filed Oct. 16, 2020); *see* February 2022 Supplement at 3, n.5; *see also Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000), International Authorizations Granted*, Public Notice, Report No. TEL-02267, DA No. 23-357 (OIA Apr. 27, 2023) (stating among other things that "[t]he applicant 'acknowledges that [the] notice of [the international section 214] pro forma assignment is not timely filed . . . .' and 'any oversight in filing was inadvertent and unintentional'" and that "[a]ction on this notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules, and without prejudice to Commission action on other related, pending applications or petitions").

[27] Restated Petition at 4; Step One Application, Description of Proposed Transaction and Public Interest Statement at 4-5 (Public Interest Statement).

[28] Restated Petition at 5. According to the Restated Petition, "Windstream has two classes of equity interest: Common Units, which are voting and uninsulated under the FCC's rules; and Limited Rights Common Units, which are insulated under Section 11.1(b) of the Windstream LLC Agreement. *Id.* Holders of Special Warrants are permitted to elect to exercise for Common Units or Limited Rights Common Units. *Id.* at 5-6. To the extent that any holder of Special Warrants is unable to acquire Common Units and fails to elect to acquire Limited Rights Common Units, it will continue to hold Special Warrants." *Id.* at 6.

[29] *Id.* at 4-5.

[30] *Id.* at 5.

[31] *Id.* at 9-10, Exh. D.

[32] *Id.*, Exh. B at 2. Petitioners notified the Commission that the equity interest held by Nexus Aggregator L.P. shifted from 49.36% to 49.27%. January 2023 Supplement, Exh. A.

[33] Restated Petition, Exh. E at 2.

[34] *Id.*, Exh. E at 3.

and Elliott International Limited is ultimately held by insulated entities, none of which hold a disclosable interest.[35]

According to the Restated Petition, Pacific Investment Management Company LLC (PIMCO), a Delaware limited liability company,[36] which ultimately is owned and controlled by Allianz SE, a corporation organized in Germany,[37] would exclusively control the voting in Windstream on behalf of a series of U.S. and foreign funds that would collectively hold a 21.17% direct equity interest in Windstream upon closing.[38] In addition, Oaktree WIN Management, LLC, a Delaware entity,[39] would exclusively control the voting interests in Windstream on behalf of a number of U.S. and foreign entities that would collectively hold a 13.78% direct equity interest in Windstream upon closing through four Delaware LLCs: (1) OCM Opps WIN Holdings, LLC; (2) OCM SC WIN Holdings, LLC; (3) OCM GC WIN Holdings, LLC; and (4) Oaktree Senior Loan Fund WIN Holdings, LLC.[40] Petitioners state that the remaining 15.69% of equity interest in Windstream would be held by various U.S. and foreign entities,[41] all of which would hold less than 10% equity interest in Windstream.[42]

The Petitioners filed several supplements to notify the Commission of the changes that occurred in Windstream's ownership during the pendency of the Petition.[43] The Petitioners state that Windstream has placed limits on post-filing trades by prohibiting foreign investors from acquiring uninsulated Common Units until the investor receives specific approval from the Commission, and requiring new

[35] *Id*.

[36] Restated Petition, Exh. F. at 23. Disclosable interest holders that have direct interest in Windstream are listed in Exhibit F. The note to the PIMCO Ownership Structure Chart in Exhibit F states that M Unit holders should be treated as insulated members of PIMCO LLC and be considered to have a voting interest in Windstream equal to their equity interest. Thus, Petitioners state that none of the foreign holders of M Units require specific approval. Restated Petition at Exh. F (*citing iHeartMedia, Inc. Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 35 FCC Rcd 12770, 12772, n.15, 12776 (2020)).

[37] Restated Petition, Exh. F at 31.

[38] *Id.*, Exh. B at 2.

[39] *Id.*, Exh. B at 2 and Exh. G at 7.

[40] *Id.*, Exh. B at 2. Disclosable interest holders that have direct interest in Windstream are listed in Exhibit G of the Restated Petition. Restated Petition, Exh. G at 1-6. *See also* February 2022 Supplement at 3 and attached chart depicting Brookfield indirect equity interest in Windstream.

[41] Restated Petition, Exh. B at 2. Disclosable interest holders that have direct interest in Windstream are listed in Exhibits E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, and KK of the Restated Petition.

[42] *Id.*, Exh. B at 2.

[43] *See supra* note 1; February 2022 Supplement at 1-2. According to Petitioners, during the pendency of the Petition, investors traded both Common Units and Special Warrants with existing and new investors which resulted "in equity changes of less than 1% for the largest two investors (Elliott and PIMCO), equity changes of less than three-tenths of a percent for a few smaller holders, and in most cases equity changes of only a few hundredths of a percent." Additionally, the February 2022 Supplement notes other changes including that, one investor no longer holds an interest in Windstream while the Restated Petition lists 11 new investors. In the January 2023 Supplement, Petitioners updated the record to disclose the shift of the interests held by certain investors. Petitioners state that the "transactions and additional distributions since October, 2022 have proven very limited in scope, and have not resulted in any new entities holding more than 5% or 10% or more of Windstream's equity of voting interests. Thus, the transactions—standing alone or in the aggregate—did not change in any material way the analysis that the Commission or the Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector are required to perform." January 2023 Supplement at 3.

foreign investors that are not already disclosed in the Restated Petition to agree that Special Warrants can be purchased only if they will be exercised in exchange for insulated Limited Rights Common Units.[44]

Character Qualification of PIMCO

Pursuant to section 1.65(a) of the Commission's rules,[45] the Petitioners filed two letters to notify the Commission that Allianz Global Investors U.S., LLC (AGI), a subsidiary of Allianz of America, Inc. (AIA), entered into a settlement with the Securities and Exchange Commission (SEC), establishing that AGI violated various securities laws, and a plea agreement with the Department of Justice (DOJ), pursuant to which AGI pleaded guilty to one count of criminal securities fraud.[46] AGI is an indirect subsidiary of Allianz SE, which is the ultimate owner of both PIMCO and AIA. According to the May 17, 2022 SEC Administrative Proceeding Order that was attached to Petitioners' May 2022 PIMCO letter, AGI was a registered investment advisor headquartered in New York that managed $148.8 billion in client assets as of December 31, 2020.[47] The portfolio management team for the Structured Alpha Funds at AGI misled investors as to the significant downside risk of the Structured Alpha Funds.[48] Further, while the misconduct was ongoing, the portfolio management team engaged in numerous, but ultimately unsuccessful, efforts to conceal their misconduct from the SEC.[49]

As a result of the violations of the securities laws, AGI's Structured Alpha Funds lost billions of dollars.[50] Under the settlement with the SEC, AGI was required to pay a civil money penalty of $675 million and approximately $349.2 million in disgorgement and prejudgment interest.[51] Similarly, AGI entered into a plea agreement with the DOJ,[52] in which AGI pleaded guilty to committing securities fraud

[44] *Id*. at 2-3. According to the February 2022 Supplement, existing U.S. and foreign investors disclosed in the Restated Petition are permitted to trade Common Units and Special Warrants among themselves and may sell Common Units and Special Warrants to new U.S. investors that would not require specific approval. The February 2022 Supplement also states that substantial changes to the ownership percentages provided in the Restated Petition are not anticipated.

[45] 47 CFR § 1.65(a).

[46] On May 26, 2022, the Petitioners filed a letter pursuant to section 1.65 of the Commission's rules. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed May. 26, 2022) (May 2022 PIMCO letter). The May 22 PIMCO Letter includes the following attachments: Allianz SE Group Communications Media Release, SEC Administrative Proceeding Order, DOJ May 17, 2022 Letter, and SEC Temporary Waiver of Section 9(c) of the Investment Company Act of 1940 Order. On December 22, 2022 Petitioner also filed a letter providing a list of further information that the Commission requested from Petitioners regarding AGI's settlement with SEC and guilty plea with DOJ. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed Dec. 22, 2022) (December 2022 PIMCO Letter). On January 11, 2023 Petitioners filed a letter providing further information about AGI's settlement with SEC and guilty plea with DOJ (filed Jan. 11, 2022) (January 2023 PIMCO Letter).

[47] May 2022 PIMCO Letter, SEC Administrative Proceeding Order at 1-2.

[48] *Id.*, SEC Administrative Proceeding Order at 2-3.

[49] *Id.*, SEC Administrative Proceeding Order at 8.

[50] *Id.*, SEC Administrative Proceeding Order at 2.

[51] May 2022 PIMCO Letter at 1; May 2022 PIMCO Letter, SEC Administrative Proceeding Order at 9.

[52] On May 3, 2023, Petitioners filed a supplement providing additional information about AGI. Letter from Jeffrey J. Carlisle and David S. Keir, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. ISP-PDR-20201021-00010 (filed May. 3, 2023) (May 2023 Supplement) (the supplement includes the hearing where the presiding judge approved the plea agreement, and AGI was adjudged guilty. *United States v.*

(continued….)

and admitted that "at least one employee of [AGI] engaged in securities fraud within the scope of his employment and for the benefit of [AGI], and that [AGI] is responsible for the federal criminal violation charged in the Information and set forth in the Statement of Facts as a result of the actions of its employees and agents as described in the Statement of Facts."[53] As a result of the plea agreement with the DOJ, AGI had to pay a forfeiture of $174.3 million and restitution of $3.2 billion and serve a five-year period of probation.[54] Windstream states that AGI's total compensation to investors would equal $5 billion.[55]

The Petitioners argue that "AGI's guilty plea and settlement do not disqualify PIMCO from holding an ownership interest in Windstream" and provide multiple reasons as to why that is the case.[56] Petitioners contend that despite AGI's misconduct, none of the other entities in the Allianz group of companies were found by the SEC or DOJ to have knowledge or participation in the misconduct.[57] The Petitioners assert that AGI is not a part of PIMCO's upstream ownership structure. The Petitioners explain that although AIA has an indirect equity ownership interest in PIMCO,[58] AGI is a separate subsidiary of AIA.[59] The Petitioners state that "currently and at the time of AGI's misconduct, AGI employees are not and were not involved in and do not supervise or oversee the portfolio management of funds managed, advised or sub-advised by PIMCO."[60] The Petitioners further assert that "AGI and PIMCO do not share any employees, officers or directors."[61] Further, the Petitioners state that the SEC granted a waiver from section 9(a) of the Investment Company Act of 1940 to allow PIMCO to serve as

Allianz Global Investors U.S., LLC, Case 1:22-cr-00279-CM, Hearing Transcript at 18 (transcript entered May 20, 2022)).

[53] May 2022 PIMCO Letter, DOJ May 17, 2022 Letter at 1-2.

[54] January 2023 PIMCO Letter, Exh. B (Plea Agreement) at 4-6. AGI pleaded guilty to violating 15 U.S.C. §§ 78j(b) and 78ff, 17 CFR § 240.10b-5, and 18 U.S.C. § 2. Plea Agreement at 1. The maximum statutory term of probation cited in the Plea Agreement applies to felonies. *Id.* (citing 18 U.S.C. §§ 3551(c)(1), 3561(c)(1)). AGI was subject to additional DOJ financial obligations that were reduced as part of the Plea Agreement. *Id.* at 4-6.

[55] May 2022 PIMCO Letter at 1.

[56] *Id*. at 2.

[57] *Id.* . In the January 2023 PIMCO Letter, Petitioners state that according to AGI's May 17, 2022 plea agreement with the DOJ, the DOJ found that "while AIA holds an equity interest in AGI, DoJ's investigation did not reveal 'that anyone at any other organizations that fell within the broader umbrella of the parent company Allianz SE was aware of or participated in the misconduct.'" January 2023 PIMCO Letter at 2 (citing to January 2023 PIMCO Letter at Exh. B which contains DOJ's May 17, 2022 plea agreement's statement of facts). Petitioners further state that the DOJ found that the investigation did not reveal "evidence that these control failures occurred within any other organizations that fall within the broader umbrella of the parent company Allianz SE." *Id*.

[58] May 2022 PIMCO Letter at 2 (stating that PIMCO is the "investment manager, adviser or sub-adviser to the entities that hold warrants in Windstream").

[59] *Id* (referring to Restated Petition at Exh. F). Petitioners state that "AGI is a wholly-owned subsidiary of AIA, which holds its interest in AGI through two intermediate, wholly-owned entities as shown in Exhibit A." January 2023 PIMCO Letter at 2 (citing to January 2023 PIMCO at Exh. A).

[60] May 2022 PIMCO Letter at 2. *See also,* January 2023 PIMCO Letter at 2 & Exh. C.

[61] Petitioner states that "[a]lthough Allianz SE indirectly holds 100% of the voting equity in PIMCO, PIMCO operates its business separately and autonomously from Allianz SE and its other subsidiaries, including AIA and AGI. In particular, Allianz SE and its other subsidiaries are not involved in PIMCO's fund management and investment processes. . . It is also documented in written agreements between PIMCO and Allianz SE that contemplate explicitly that PIMCO will operate independently from any other Allianz asset management subsidiaries and, accordingly, function as competitors in the asset management marketplace." January 2023 PIMCO Letter at 3.

an investment adviser or sub-adviser to U.S. registered funds.[62] The Petitioners state that the waiver granted by the SEC was "based in part on PIMCO's representation that the misconduct was entirely limited to AGI and its personnel, and that none of PIMCO's current or former directors, officers or employees were involved."[63]

As part of our public interest analysis, we consider whether PIMCO possesses the character qualifications necessary to hold an interest requiring approval. In related contexts, the Commission evaluates character qualifications when the record presents alleged violations of the Communications Act or Commission rules (so-called FCC misconduct) or adjudicated violations of certain other laws (so-called non-FCC misconduct).[64] In determining whether misconduct by a related entity presents character qualification issues, the Commission looks at factors such as the type of misconduct, the roles of employees and managers in the misconduct, the parent-subsidiary relationship, and the relationship with related subsidiaries.[65] The Commission also considers whether mitigating factors lessen or negate any adverse character inference.[66] Based on our evaluation of the facts and relevant considerations under the Commission's character policy, we find that AGI's misconduct does not warrant an adverse character inference against PIMCO.

[62] May 2022 PIMCO Letter at 2 (stating that on May 17, 2022, the SEC granted a temporary waiver from section 9(a) of the Investment Company Act of 1940 to allow PIMCO to serve as an investment adviser or sub-adviser to U.S. registered funds until final action is taken on a permanent order, which PIMCO expects to receive in the ordinary course). Petitioners provide that "[b]ecause of the criminal conviction of AGI and PIMCO's status as an 'affiliated person' of AGI under the broad definition of that term in the Investment Company Act of 1940 ('Investment Company Act'), PIMCO sought and obtained exemptive relief from the SEC under Section 9(c) of the Investment Company Act in order to continue to serve as an investment adviser or sub-adviser to U.S. registered funds, and for PIMCO's subsidiary PIMCO Investments to continue to serve as a principal underwriter to registered funds. . . PIMCO's application to the SEC, which is attached as Exhibit D, emphasized and discussed in great detail PIMCO's separateness from the rest of Allianz, and the robustness of its risk management, compliance, and other control functions. Exhibit D at 21-24. Section 9(c) requires the SEC to consider the public interest and the protection of investors before issuing exemptive relief under that provision, so the SEC reviewed and was necessarily satisfied with PIMCO's separateness and the robustness of its control functions, in determining that PIMCO could continue to serve as an investment adviser to registered funds and that PIMCO Investments could continue to serve as a principal underwriter." January 2023 PIMCO Letter at 5 (citing January 2023 PIMCO Letter at Exh. D; SEC Temporary Order and Notice of Application (May 17, 2022), https://www.sec.gov/rules/ic/2022/ic-34587.pdf; and SEC Permanent Order (June 14, 2022), https://www.sec.gov/rules/ic/2022/ic-34616.pdf).

[63] May 2022 PIMCO Letter at 2.

[64] *See generally Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986) (1986 Policy Statement) (character qualifications of broadcast licensees); *1990 Character Policy Statement Policy Regarding Character Qualifications in Broadcast Licensing,* Policy Statement and Order, 5 FCC Rcd 3252, 3252 & n.3 (1990) (*1990 Character Policy Statement*), *recon. granted in part,* 6 FCC Rcd 3448 (1991), *further recon. granted in part,* 7 FCC Rcd 6564 (1992) (holding that any felony conviction is potentially relevant to character, and the Commission retains discretion to consider serious misdemeanors convictions "in appropriate or compelling cases"). *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*; *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23915, para. 53 (1997), *subsequent history omitted* (application of character standards in connection with foreign participation in the U.S. telecommunications market); *MCI Telecommunications Corp.; Petition for Revocation of Operating Authority,* 3 FCC Rcd 509, 512, n.14 (1988) (stating that character qualifications standards adopted in the broadcast context can provide guidance in the common carrier context).

[65] 1986 Policy Statement, 102 F.C.C.2d 1179, 1216-1219, paras. 76-83.

[66] *1990 Character Policy Statement*, 5 FCC Rcd at 3252 (listing mitigating factors as the willfulness, frequency, currentness, and seriousness of the misconduct; the nature of the participation of managers or owners; efforts made to remedy the wrong; overall record of compliance with FCC rules and policies; and rehabilitation).

Misconduct by an affiliate of the entity whose character is being evaluated is relevant only if the affiliates share common principals; misconduct by the wrongdoer affiliate's employees will be considered only if the employee responsible for the misconduct is involved in the activities of the affiliate whose character is at issue and where there is an attributable interest in that affiliate.[67] The Commission has held that there is no basis to impute misconduct by a subsidiary (AGI in this case) to the common parent and then back down to the sister subsidiary (PIMCO) where there is "no connection . . . beyond common ownership" between the subsidiaries.[68]

As noted above, the misconduct at issue was organized and led by three individuals on AGI's portfolio management team.[69] Although AGI is a sister subsidiary to PIMCO, AGI itself did not and does not hold any ownership interest in PIMCO.[70] Further, both the SEC and DOJ concluded that AGI was the only entity that was responsible for any misconduct,[71] and, despite AGI's misconduct, the SEC has deemed PIMCO to be qualified to provide investment services to the public.[72] Pursuant to the temporary and permanent waiver granted by the SEC, PIMCO has agreed not to employ any persons who were involved in the misconduct.[73] The Petitioners have also made a showing to the Commission that AGI did not at the time of misconduct and does not control, manage, or otherwise participate in the operation of PIMCO.[74] The record shows that, while AGI and PIMCO have a common parent, they did not at the time of misconduct and do not currently share officers or directors, and there was no integration of operating personnel.[75] Further, no employees responsible for the misconduct were or are involved in PIMCO's

[67] 1986 Policy Statement, 102 F.C.C.2d 1179, 1219, para. 82.

[68] *Id*. at para. 79 (*citing Applications of: Cowles Broadcasting, Inc. (WESH-TV) Daytona Beach, Fla. for Renewal of License Central Fla. Enterprises, Inc. Daytona Beach, Fla. for Constr. Permit*, 86 F.C.C.2d 993, 994–95 (1981), *aff'd*, *Central Fla. Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982) (cited in 1986 Policy Statement, 102 F.C.C.2d at 1218 n.94, para. 79). In *Cowles*, the Commission found that the licensee's facilities were not used in wrongdoing, "there was no integration of operating personnel" between the licensee and non-licensee subs, *id.* at 1002; and "there was no basis to conclude that the principal common officers of [the licensee subsidiary and wrongdoing subsidiaries] participated in or encouraged any misconduct." *Central Florida*, 683 F.2d at 509; *see also Cowles*, 86 F.C.C.2d 993 at 998-99, para. 16.

[69] May 2022 PIMCO Letter, Exh. D at 2-3 (providing a copy of the SEC Administrative Proceeding Order). The SEC Administrative Proceeding Order can also be found at https://www.sec.gov/litigation/admin/2022/34-94927.pdf.

[70] January 2023 PIMCO Letter at 2, 9; *id.* Ex C; Windstream May 26, 2022 Letter at 2.

[71] January 2023 PIMCO Letter at Ex. B (DOJ Statement of Facts) at para. 2.

[72] *Id.* at 5; SEC, Order Pursuant to Section 9(c) of the Investment Company Act of 1940 Granting an Exemption from Section 9(a) of the Act (June 14, 2022), https://www.sec.gov/Archives/edgar/data/1493338/999999999722003241/filename1.pdf (SEC Permanent Order) (granting to "Covered Persons" a permanent exemption from disqualification from providing fund servicing activities governed by section 9(a) of the Investment Company Act of 1940); SEC, Temporary Order and Notice of Application, https://www.sec.gov/rules/ic/2022/ic-34587.pdf, at 2, 5-6 (SEC Temporary Order) (defining "Covered Person" to include "Continuing Fund Servicing Applicants," including PIMCO).

[73] SEC, Temporary Order at 14-15; Application Pursuant to Section 9(c) Of The Investment Company Act of 1940 for Temporary and Permanent Orders Exempting Applicants from the Provisions of Section 9(a) of Such Act at 17, part V.E, https://www.sec.gov/Archives/edgar/data/69596/000119312522152935/d327003d40app.htm.

[74] January 2023 PIMCO Letter at 3.

[75] *Id*. at 2-3. Exhibit D of the January 2023 PIMCO Letter provides an attachment of the SEC Order which states, "[t]he Pleading Entity represents that (i) except as identified in Section II.B. above, none of the current or former directors, officers or employees of the Pleading Entity engaged in the Conduct; (ii) no current or former director, officer, or employee of the Pleading Entity or any Covered Person who previously has been or who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been

(continued….)

activities.[76] Finally, AGI has undertaken other remedial measures detailed in the record in order to mitigate the effects of the misconduct.[77] As was the case in *Cowles*,[78] the record shows there is no connection between AGI and PIMCO beyond common ownership, and accordingly there is no basis to impute AGI's misconduct to PIMCO. Thus, the facts presented do not support an adverse character inference against PIMCO.

National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns

When analyzing petitions for declaratory ruling, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.[79] As part of our public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.[80] The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns.[81] The Commission, however, ultimately makes an independent decision

responsible for the Conduct will be an officer, director, or employee of any Applicant, Allianz SE, or of any Covered Person; (iii) such directors, officers, and employees and any other person who otherwise participated in the Conduct will not have any future involvement in the Covered Persons' activities in any capacity described in Section 9(a) of the Act; and (iv) because, except as identified in Section II.B. above, the directors, officers and employees of Applicants did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or principal underwriter." January 2023 PIMCO Letter, Exh. D at 18-19.

[76] January 2023 PIMCO Letter at 3-6. Exhibit D of the January 2023 PIMCO Letter provides an attachment of the SEC order which states "The Pleading Entity represents that (i) except as identified in Section II.B. above, none of the current or former directors, officers or employees of the Pleading Entity engaged in the Conduct; (ii) no current or former director, officer, or employee of the Pleading Entity or any Covered Person who previously has been or who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant, Allianz SE, or of any Covered Person; (iii) such directors, officers, and employees and any other person who otherwise participated in the Conduct will not have any future involvement in the Covered Persons' activities in any capacity described in Section 9(a) of the Act; and (iv) because, except as identified in Section II.B. above, the directors, officers and employees of Applicants did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or principal underwriter. Each of the following employees identified in the Statement of Facts as having engaged in the Conduct has been terminated or is no longer employed by any affiliate of the Pleading Entity." January 2023 PIMCO Letter, Exh. D at 9.

[77] *See* January 2023 PIMCO Letter at 8.

[78] 86 F.C.C.2d 993.

[79] *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act). *See also T-Mobile/Sprint Order*, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

[80] 47 CFR § 1.40001(a). *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

[81] *Executive Branch Review Order*, 35 FCC Rcd at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space*

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on the application based on the record in the proceedings.[82]

Pursuant to Commission practice, the Petition was referred to the relevant Executive Branch agencies (including the Committee agencies) for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Petitioners. On March 24, 2022, the Committee notified the Commission that it was reviewing the Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Petition.[83] We deferred action on the Petition in response to the Committee's request. On October 11, 2022, the Committee notified the Commission that the Petitioners had provided complete responses to initial questions posed by the Committee and that the Committee was conducting an initial review to assess whether granting the Petition would pose a risk to the national security or law enforcement interests of the United States.[84]

In its petition to adopt conditions filed on February 3, 2023, the Committee advised the Commission that it has no objection to the Commission granting the Petition "provided that the Commission conditions its approval on the assurances of Windstream Holdings II, LLC ("Windstream"), to abide by the commitments and undertakings" set forth in the Windstream LOA.[85]

In accordance with the request of the Committee, and in the absence of any objection from Windstream, we grant the Committee Petition, and condition the grant of the Petition, as amended, on compliance by Windstream, its members, and its common carrier subsidiaries with the commitments and undertakings set out in the Windstream LOA.[86] A failure to comply and/or remain in compliance with any of these conditions shall constitute a failure to meet a condition of this ruling and the underlying authorizations and licenses[87] and thus grounds for declaring the authorizations and licenses terminated without further action on the part of the Commission.[88] A failure to meet a condition of this grant may also result in monetary sanctions or other enforcement action by the Commission.

Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)). *See also T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *Pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

[82] 47 CFR § 1.40001(b) ("The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) ... that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.").

[83] Letter from Megan Fluckiger, Department of Justice, to Marlene H. Dortch, Secretary, FCC, File No. ISP-PDR-20201021-00010, and Attach. (filed Mar. 24, 2022).

[84] Letter from Megan Fluckiger, Department of Justice, to Marlene H. Dortch, Secretary, FCC, File No. ISP-PDR-20201021-00010 (filed Oct. 11, 2022).

[85] Committee Petition at 1-2; Windstream LOA.

[86] Windstream LOA.

[87] *2020 Waiver Grant PN,* Attach. A (listing the authorizations and licenses).

[88] *See, e.g., Grant of Consolidated Communications Holdings, Inc. and Searchlight III CVL, L.P. Petition For Declaratory Ruling,* DA-21-1468, IB Docket No. IB 21-172, IBFS File No. ISP-PDR-20210105-00001 at 8 (IB 2021).

Petition for Declaratory Ruling Under Section 310(b)(4)

Pursuant to section 1.5001(i) of the Commission's rules,[89] Petitioners request that the Commission specifically approve the equity and/or voting interests that would be held in the controlling U.S. parent, Windstream, upon completion of the proposed transaction by the foreign-organized entities and foreign individuals, categorized below based on their investment management entities, at the percentages specified below.[90] All of the entities and individuals named below, except for Elliott International, L.P. and Elliott International Limited, hold voting Common Units in Windstream and, therefore, hold uninsulated membership interests in Windstream. Although these uninsulated entities and individuals hold minority equity and voting interests in Windstream, their voting interests have been calculated in accordance with section 1.5002(b)(iii)(A) of the rules to be deemed to hold a 100% voting interest in Windstream.[91]

Elliott Investment Management L.P.

Elliott International, L.P. (33.34% equity, 33.34% voting) (Cayman Islands); and
Elliott International Limited (34.31% equity, 34.31% voting) (Cayman Islands).

Pacific Investment Management Company, LLC

PIMCO Funds: Global Investors Series plc, Income Fund (2.25% equity, deemed 100% voting) (Ireland);
PIMCO Tactical Opportunities Master Fund Ltd. (0.96% equity, deemed 100% voting) (Cayman Islands);
PIMCO Monthly Income Fund (1.11% equity, deemed 100% voting) (Canada);
PIMCO DISCO Fund III LP (0.39% equity, deemed 100% voting) (Cayman Islands);
PIMCO Global Income Opportunities Fund (0.28% equity, deemed 100% voting) (Canada);
PIMCO Bermuda Trust II: PIMCO Bermuda Income Fund (M) (0.25% equity, deemed 100% voting) (Bermuda);
BMO Global Strategic Bond Fund (0.08% equity, deemed 100% voting) (Canada);
Desjardins Global Tactical Bond Fund (0.07% equity, deemed 100% voting) (Canada);
PIMCO Bermuda Trust II: PIMCO Bermuda Low Duration Income Fund (0.06% equity, deemed 100% voting) (Bermuda);
Desjardins Floating Rate income Fund (0.02% equity, deemed 100% voting) (Canada);
PIMCO Funds: Global Investors Series plc, Strategic Income Fund (<0.01% equity, deemed 100% voting) (Ireland);
PIMCO Funds: Global Investors Series plc, Low Duration Income Fund (<0.01% equity, deemed 100% voting) (Ireland);
PIMCO Tactical Opportunities Offshore Fund, L.P. (0.96% equity, deemed 100% voting) (Cayman Islands);
PIMCO Distressed Senior Credit Opportunities Fund II Offshore Feeder, L.P. (0.24% equity, 0.24% voting) (Cayman Islands);

[89] 47 CFR § 1.5001(i).

[90] In the January 2023 Supplement, Petitioners notified the Commission that certain changes in interest holdings resulted in changes to the percentages reported in the Restated Petition. As a result, certain entities which initially requested specific approval in the Restated Petition currently have 0% equity and 0% voting interest, no longer required to request specific approval. The entities that no longer require specific approval are: FFI Fund Ltd (0% equity, 0% voting) (Cayman Islands); FYI Ltd (0% equity, 0% voting) (Cayman Islands); Olifant Fund, Ltd (0% equity, 0% voting) (Cayman Islands); Columbia Cent CLO 27 Limited (0% equity, 0% voting) (Cayman Islands); and Spectrum Master Fund, Ltd. (0% equity, 0% voting) (Cayman Islands). January 2023 Supplement at Exh. A.

[91] *See* 47 CFR § 1.5002(b)(iii)(A); *see also* Restated Petition at 12-15 (requests for specific approval).

Allianz Asset Management GmbH (0% equity, deemed 100% voting) (Germany);
Allianz Finanzbeteiligungs GmbH (0% equity, deemed 100% voting) (Germany);
Allianz Europe B.V. (0% equity, deemed 100% voting) (Netherlands); and
Allianz SE (0% equity, deemed 100% voting) (Germany).

Oaktree WIN Management, LLC

LGIAsuper (0.0014% equity, deemed 100% voting) (Australia);
LGIAsuper Trustee (0.0014% equity, deemed 100% voting) (Australia); and
Renaissance investment Holdings Ltd. (0.0012% equity, deemed 100% voting) (Bermuda).

Brigade Capital Management

Mediolanum Best Brands (0.12% equity, deemed 100% voting) (Ireland).

Arena Capital Advisors

HP XIV (0.18% equity, deemed 100% voting) (Germany);
INKA for account of beTurn (0.12% equity, deemed 100% voting) (Germany);
T&D Fund – Arena Short Duration High Yield Fund (0.04% equity, deemed 100% voting) (Luxembourg); and
BUMA-Universal-Fonds CTA (0.01% equity, deemed 100% voting) (Germany).

Deutsche Bank AG

Nomura Global Manager Select Bank Loan Fund (<0.01% equity, deemed 100% voting) (Cayman Islands);
DWS Group GMBH & Co. KGaA (0% equity, deemed 100% voting) (Germany);
DB Beteiligungs-Holding (0% equity, deemed 100% voting) (Germany); and
Deutsche Bank AG (1.11% equity, deemed 100% voting) (Germany).

HSBC Bank

HSBC Bank plc (0.45% equity, deemed 100% voting) (United Kingdom); and
HSBC Holdings plc (0.45% equity, deemed 100% voting) (United Kingdom).

Columbia Management Investment Advisors

Cent CLO 21 Limited (0.08% equity, deemed 100% voting) (Cayman Islands); and
Columbia Cent CLO 28 Limited (0.03% equity, deemed 100% voting) (Cayman Islands).

Siemens Financial Services Inc.

Siemens AG (0.36% equity, deemed 100% voting) (Germany).

Symphony Asset Management LLC

PensionDanmark Pensionsforsikringsaktieselskab (0.02% equity, deemed 100% voting) (Denmark);
BayCity Alternative Investment Funds SICAV-SIF – BayCity US Senior Loan Fund (<0.01% equity, deemed 100% voting) (Luxembourg);
Symphony Floating Rate Senior Loan Fund (<0.01% equity, deemed 100% voting) (Canada); and
Nomura Multi Managers Fund (<0.01% equity, deemed 100% voting) (Cayman Islands).

Millais Limited

Millais Limited (0.11% equity, deemed 100% voting) (Cayman Islands);
Robert Heaselgrave (0% equity, deemed 100% voting) (United Kingdom); and
Andrew Dodd (0% equity, deemed 100% voting) (United Kingdom).

Credit Suisse Securities (USA) LLC

Credit Suisse AG (0.05% equity, deemed 100% voting) (Switzerland); and
Credit Suisse Group AG (0.05% equity, deemed 100% voting) (Switzerland).

Jackson National Life Insurance Company

Prudential (US Holdco 1) Limited (<0.01% equity, deemed 100% voting) (United Kingdom);
Prudential Corporation Asia Limited (<0.01% equity, deemed 100% voting) (Hong Kong); and
Prudential plc (<0.01% equity, deemed 100% voting) (United Kingdom).

ABRY Advanced Securities Fund III, L.P.

ABRY Advanced Securities Fund III, L.P. (<0.01% equity, deemed 100% voting) (Cayman Islands); and
ABRY ASF Investors III, L.P. (0.00% equity, deemed 100% voting) (Cayman Islands).

Invesco Advisers, Inc.

Invesco Holding Company Limited United (0.00% equity, deemed 100% voting) (United Kingdom); and
Invesco Limited (0.00% equity, deemed 100% voting) (Bermuda).

Bowery Funding ULC

Bowery Funding ULC (<0.01% equity, deemed 100% voting) (Canada); and
Bank of Nova Scotia (<0.01% equity, deemed 100% voting) (Canada).

Diaz

Manuel Antonio Rodriguez Diaz (<0.01% equity, deemed 100% voting) (Spain).

The Petitioners also seek advance approval for Windstream to be up to and including 100% foreign-owned in the aggregate.[92] Pursuant to section 1.5001(k) of the Commission's rules,[93] Petitioners also request advance approval for the foregoing entities and individuals to increase their indirect equity and/or voting interests in Windstream up to a non-controlling 49.99%. Uninsulated individuals and entities that hold minority equity and voting interests in Windstream with a deemed 100% voting interest in Windstream in accordance with section 1.5002(b)(iii)(A) of the Commission's rules will continue to be deemed to hold a 100% voting interest in Windstream in accordance with section 1.5002(b)(iii)(A) of the Commission's rules.[94]

[92] Restated Petition at 5.

[93] 47 CFR § 1.5001(k).

[94] Through the two-step transaction, Windstream Holdings, Inc. and its subsidiaries emerged from bankruptcy as Windstream Holdings II, LLC, a reorganized Delaware limited liability company. Restated Petition at 5-6. Because the controlling U.S. parent of the common carrier licensee is now a limited liability company, calculations of

(continued….)

The Petitioners assert that the proposed foreign ownership of the controlling U.S. parent, Windstream, would serve the public interest.[95] We received no comments regarding foreign ownership, and, as discussed above, NTIA, on behalf of the Committee, has advised the Commission that the Committee has no objection to the Commission granting the Petition, "provided that the Commission conditions its approval on the assurance of Windstream Holdings II, LLC ('Windstream'), to abide by the commitments and undertakings set forth in the January 18, 2023, Letter of Agreement (LOA)" attached to the Committee Petition.[96]

Based on our review of the record, under section 310(b)(4) of the Act and the Commission's foreign ownership rules and policies, we find that public interest would not be served by prohibiting foreign ownership of Windstream, the controlling U.S. parent, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Petition, as amended, subject to the conditions set out herein. This declaratory ruling authorizes 100% aggregate foreign ownership of Windstream, as the controlling U.S. parent of the of the common carrier licensees, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules,[97] as well as additional conditions set forth herein.

In addition, pursuant to section 1.5001(i) of the Commission's rules, and subject to the conditions set forth herein, we approve the foreign equity and voting interests that would be held in Windstream by each of the above-listed foreign entities and individuals in the amounts specified. We also approve the Petitioner's request for advance approval, pursuant to section 1.5001(k), permitting the above-listed foreign entities and individuals to increase their equity and voting interests in Windstream up to the amounts specified above.

Finally, under this declaratory ruling, Petitioners have an affirmative duty to monitor their foreign equity and voting interests, calculate their interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules,[98] and otherwise ensure continuing compliance with the provisions of section 310(b)

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indirect voting interests are governed by section 1.5002(b)(iii)(A) of the Commission's rules. 47 CFR § 1.5002(b)(iii)(A). As such, entities that hold interests into Windstream Holdings II, LLC that are not insulated pursuant to section 1.5003 of the Commission's rules will be deemed to hold 100% voting interest in Windstream Holdings II, LLC. *Id.*; 47 CFR § 1.5003. A finding that an entity is "deemed" to hold a 100% voting interest for purposes of determining compliance with section 310(b)(4) of the Act and section 1.5000(a)(1) *et seq*. of the Commission's rules does not indicate that the interest constitutes *de jure* control for purposes of compliance with section 310(d) of the Act.

[95] Restated Petition at 16-19.

[96] Committee Petition at 2.

[97] 47 CFR § 1.5004. While all of the terms and conditions set forth in section 1.5004 of the Commission's rules apply, we highlight the following provisions: (1) where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign- organized entity; (2) a licensee that has received a foreign ownership ruling, including a U.S.-organized successor-in-interest to such licensee as part of reorganization, or any subsidiary or affiliate relying on such licensee's ruling, shall file a new petition for declaratory ruling under §1.5000 to obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms of conditions of its rulings; and (3) if at any time the licensee, including any successor-in interest and any subsidiary or affiliate knows, or has reason to know, that it is no longer in compliance with its foreign ownership rulings or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance.

[98] 47 CFR §§ 1.5002-1.5003.

of the Act.[99] Furthermore, because Windstream Holdings Inc. emerged from bankruptcy as a limited liability company, section 1.5002(b)(2)(iii) will apply for purposes of calculating the voting interests held in Windstream Holdings II, LLC.[100]

A failure to comply and/or remain in compliance with any of the conditions of this declaratory ruling shall constitute a failure to meet a condition of this ruling and the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

Grant of Petition for Declaratory Ruling, As Amended

Upon review of the Petition, as amended, and consideration of the record of this proceeding, we find that the public interest would not be served by prohibiting the foreign ownership of Windstream, the controlling U.S. parent, in excess of the 25% benchmarks in section 310(b)(4) of the Act.

Pursuant to sections 4(i)-(j), 5(c), 303(r) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 155(c), 303(r), 310(b), and sections 1.5001-04, and 1.4001-04 of the Commission's rules, 47 CFR §§ 1.5001-04, 1.4001-04, and pursuant to the authority delegated under sections 0.19 and 0.351of the Commission's rules, 47 CFR §§ 0.19 and 0.351, we grant the Petition, as amended, as conditioned in this Public Notice.

Grant of the Petition, as amended, is conditioned on compliance with the terms and conditions set forth in section 1.5004 of the Commission's rules.[101]

Grant of the Petition, as amended, is further conditioned on compliance with the January 18, 2023 Letter of Agreement from Tony Thomas, President & Chief Executive Officer Windstream Holdings II, LLC, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division.[102]

Grant of the Petition, as amended, is further conditioned on compliance with the commitments set forth in the Annual Certification Agreement Letter filed by Windstream on April 27, 2023.[103]

Grant of this Petition is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

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[99] 47 CFR § 1.5004, note to paragraph (a).

[100] 47 CFR § 1.5002(b)(2)(iii); *see also* 47 CFR § 1.5003 (insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies).

[101] 47 CFR § 1.5004.

[102] Windstream LOA.

[103] Annual Certification Agreement Letter.

For further information, please contact Fara Mohsenikolour, Office of International Affairs, Telecommunications and Analysis Division, at (202) 418-1429.

-FCC-

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

In the Matter of	)	
	)	
Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations (Tecopa, California)	)	MB Docket No. 23-86
	)	RM-11948
	)	
Application for Construction Permit to Modify Station KRZQ(FM), Amargosa Valley, Nevada	)	File No. 0000112756
	)	Facility ID No. 170180
	)	

REPORT AND ORDER

Adopted: June 2, 2023 **Released: June 2, 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 Shamrock Communications, Inc. (Petitioner).[1] The *Notice* proposed the substitution of Channel 256A for vacant Channel 288A at Tecopa. California. Petitioner filed Comments.[2] No counterproposals or other comments were received in response to the *Notice*. For the reasons discussed below, we: (1) substitute Channel 256A for vacant Channel 288A at Tecopa, California; (2) grant the above-captioned hybrid modification application (Application) for Station KRZQ(FM), Amargosa Valley, Nevada; and (3) modify the license for Station KRZQ(FM), Amargosa Valley, Nevada to specify operation on Channel 291C in lieu of Channel 290C1.

II. BACKGROUND

2. The *Notice* proposed the substitution of Channel 256A for vacant Channel 288A at Tecopa, California to accommodate the hybrid Application requesting the modification of Station KRZQ(FM)'s facilities. The hybrid Application proposes to upgrade from Channel 290C1 to Channel 291C at Amargosa Valley, Nevada, and modification of the Station KRZQ(FM) license to specify operation on Channel 291C at Amargosa Valley, Nevada. As stated in the *Notice,* Petitioner claims that grant of the proposal will permit Station KRZQ(FM) to enhance service to the community of Amargosa Valley, Nevada and the surrounding areas by increasing from 1,831 covered persons to 1,336,857 covered persons within its proposed 60 dBu contour.[3]

3. Petitioner filed Comments expressing support in the Petition and reiterating its continued

[1] *See Tecopa. California*, Notice of Proposed Rule Making, DA 23-209 (MB March 14, 2023) (*Notice*); *see also* 88 FR 17171 (published March 22, 2023).

[2] Petitioner's Comments were late-filed. However, in accordance with Commission policy, the Comments will be accepted for the purpose of expressing continuing interest in the proposal since the proceeding is uncontested. *See Maryville, Missouri*, Report and Order, 31 FCC Rcd 8788 (MB 2016); *see also Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988), aff'd. 4 FCC Rcd 3412 (1989); *aff'd. sub nom. Amor Family Broadcasting v. FCC*, 918 F.2d 960 (D.C. Cir. 1990).

[3] *See Notice*, para. 2.

interest in the hybrid Application.[4] Petitioner states that if we substitute Channel 256A for vacant Channel 288A at Tecopa, California, it would allow the grant of the Application that would greatly enhance the KRZQ(FM) service area and population coverage to 1,336,857 persons within the 60 dBu contour. Petitioner pledges to expeditiously implement the KRZQ(FM) facility on Channel 291C at Amargosa Valley, NV, if the Petition is adopted and the Application is granted.[5]

III. DISCUSSION

4. 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.[6] We find that grant of the hybrid Application is in the public interest because it would allow Station KRZQ(FM) to enhanced service to the community of Amargosa Valley, Nevada and the surrounding areas by increasing its service to a net gain of 1,335,026 persons within its 60 dBu contour. Accordingly, we: (1) substitute Channel 256A for vacant Channel 288A at Tecopa, California;[7] (2) grant the KRZQ(FM) hybrid Application; and (3) modify the KRZQ(FM) license to specify operation on Channel 291C in lieu of 290C1 at Amargosa Valley, Nevada.

5. A staff engineering analysis indicates that Channel 256A can be allotted to Tecopa, California, consistent with the minimum distance separation requirements of the Commission's rules, (Rules) with a site restriction of 2.3 km (1.4 miles) northwest of the community. The reference coordinates are 35-50-48 NL and 116-13-27 WL.

6. *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

7. Accordingly, IT IS ORDERED, that the Petition for Rulemaking, filed on February 8, 2023 by Shamrock Communications, Inc., IS GRANTED.

8. IT IS FURTHER ORDERED, that the hybrid Application for Station KRZQ(FM), Amargosa Valley, Nevada, filed by Shamrock Communications, Inc., as amended on January 30, 2023 (FCC File No. 0000112756), IS GRANTED.

9. IT IS FURTHER ORDERED, that the license of station KRZQ(FM), Amargosa Valley, Nevada, IS MODIFIED to specify operation on Channel 291C in lieu of Channel 290C1.

10. 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 **July 17, 2023**, the FM Table of Allotments, 47 CFR § 73.202(b), IS

[4] Comments of Shamrock Communications, Inc. (Petitioner Comments) at 1.

[5] Petitioner Comments at 2.

[6] 47 U.S.C. § 316(a).

[7] On June 30, 2015, the Audio Division cancelled the license of Station DKMKK-FM, Fac. ID No. 189543, Channel 288A, Tecopa, California. *See Broadcast Actions,* Report No. 48524, released July 6, 2015. Channel 288A at Tecopa, California is, therefore, considered a vacant allotment resulting from the license cancellation of FM station DKMKK-FM. *See Various Locations,* Order, DA 23-111, rel. February 9, 2023 (MB 2023)(reinstating Channel 288A at Tecopa, California as a vacant FM allotment).

AMENDED, with respect to the community listed below, to read as follows:

Community	Channel No.
Tecopa, California	256A

11. The window period for filing applications for Channel 256A at Tecopa, California 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.

12. 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).

13. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

14. 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

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 23-477
Released: June 2, 2023

FCC ANNOUNCES JUNE 15, 2023 MEETING OF THE COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL

In accordance with the Federal Advisory Committee Act,[1] this Public Notice announces the June 15, 2023, meeting of the Federal Communications Commission's (Commission) Communications Equity and Diversity Council (CEDC or Committee). The CEDC meeting will be held in a hybrid manner, from 10:00 am to 5:00 pm ET. The public may attend the meeting in person at FCC headquarters at 45 L Street, NE, Washington, DC. Additionally, the meeting will be available to the public for viewing via the Internet at http://www.fcc.gov/live. While the CEDC's meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees are not required to have an appointment but must otherwise comply with protocols outlined at: https://www.fcc.gov/visit.

The agenda for the meeting will include final reports and recommendations from each of the three CEDC working groups including Innovation and Access, Digital Empowerment and Inclusion, and Diversity and Equity. The June 15, 2023, meeting is the closing meeting of the CEDC under its current charter, ending June 29, 2023.

The public may follow the meeting on the Commission's YouTube page at https://www.youtube.com/user/fccdotgovvideo. In addition, the public may follow the meeting on Twitter@fcc or via the Commission's Facebook page at www.facebook.com/fcc. Members of the public may submit questions during the meeting 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.

[1] 5 U.S.C. App. 10.

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.

– FCC –

Federal Communications Commission
Washington, DC 20554

June 5, 2023

DA 23-478

SMALL ENTITY COMPLIANCE GUIDE

Limits on Telephone Consumer Protection Act of 1991 (TCPA)
Robocall Exemptions

FCC 20-186
CG Docket No. 02-278
Adopted December 29, 2020

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although the Commission has attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

The Telephone Consumer Protection Act of 1991 (TCPA) restricts certain calls to residential telephone numbers absent the prior express consent of the called party, but authorizes the Federal Communications Commission (Commission) to exempt certain calls from this restriction.[1] The Commission adopted exemptions pursuant to this statutory authority, for example, calls made to residential lines that are not made for a commercial purpose, calls made for a commercial purpose that do not contain an unsolicited advertisement, calls from tax-exempt nonprofit organizations, and health-care related calls.[2] The 2019 Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) directs the Commission to ensure that any exemption the Commission grants includes certain requirements.[3]

The December 2020 *TCPA Exemptions Order*[4] adopts measures to implement section 8 of the TRACED Act to ensure that any exemption from the TCPA's ban on any person making calls using artificial or prerecorded voice messages in telephone calls to residential lines includes requirements with respect to: (1) the classes of parties that may make such exempted calls; (2) the classes of parties that may be called; and (3) the number of such exempted calls that may be made to a particular called party. Calls using artificial or prerecorded voice messages are those calls that convey a voice message without a live person speaking on the call. On January 23, 2023, the Commission announced that these rules would become effective July 20, 2023.[5]

II. COMPLIANCE REQUIREMENTS

The rule amendments imposed by the *TCPA Exemptions Order* establish numerical limits and opt-out requirements on callers that make artificial or prerecorded voice calls to residential lines without the prior express consent of the called party. The Commission confirmed that consent to exceed the numerical limits imposed on exempted calls can be obtained from the consumer orally or in writing. The *TCPA Exemptions Order* adopts rules for exempted calls, opt-out requirements, and do-not-call practices.

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[1] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227 (TCPA).

[2] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 35 FCC Rcd 15188, 15192 (2020) (*TCPA Exemptions Order*).

[3] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (2019) (TRACED Act).

[4] *TCPA Exemptions Order* at 15188.

[5] *CGB Announces Compliance Date for Amended Telephone Consumer Protection Act Rules on Prerecorded Calls*, CG Docket No. 02-278, Public Notice, DA 23-56 (CGB Jan. 23, 2023), 2023 WL 369965 *(TCPA Exemptions Order Public Notice)*. After the Commission released the *TCPA Exemptions Order*, two parties asked the Commission to reconsider the new requirements. *See ACA International et al, Petition for Partial Reconsideration, CG Docket No. 02-278 (filed Mar. 29, 2021); Enterprise Communications Advocacy Coalition (ECAC), Petition for Reconsideration*, CG Docket No. 02-278 (filed Mar. 17, 2021). On December 27, 2022, the Commission released an Order on Reconsideration and Declaratory Ruling amending the rules to allow callers the option of obtaining either oral or written consent if they wish to make more calls than the numerical limits on exempted artificial or prerecorded voice message calls to residential telephone lines and affirming the numerical limits and opt-out requirements on such calls. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; ACA International, the Edison Electric Institute, the Cargo Airline Association, and the American Association of Healthcare Administrative Management Petition for Partial Reconsideration; Enterprise Communications Advocacy Coalition Petition for Reconsideration*, CG Docket No. 02-278, Order on Reconsideration and Declaratory Ruling, FCC 22-100 (rel. Dec. 27, 2022) (*2022 TCPA Reconsideration Order*).

A. EXEMPTED CALLS (47 CFR § 64.1200(a))

1. Non-Commercial Calls (47 CFR § 64.1200(a)(3)(ii))

This exemption limits the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive 30-day period. This includes, for example, callers conducting research, market surveys, political polling, or similar noncommercial activities.

2. Commercial Calls that Do Not Constitute an Advertisement or Telemarketing (47 CFR § 64.1200(a)(3)(iii))

Under this exemption, the Commission limits the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive 30-day period. This includes, for example, calls regarding prescription refill reminders, power outage updates, and data security breaches.

3. Calls by Tax Exempt Nonprofit Organizations (47 CFR § 64.1200(a)(3)(iv))

Under this exemption, the Commission limits the number of calls that a tax-exempt nonprofit organization can make to a particular residential line to three artificial or prerecorded voice calls within any consecutive 30-day period.

4. Health Care-Related Calls (47 CFR § 64.1200(a)(3)(v))

Under this exemption, the Commission limits the number of calls that can be made to a particular residential line to one artificial or prerecorded voice call per day up to a maximum of three artificial or prerecorded voice calls per week. These include, for example, calls by health care providers and health insurance plans about prescription refills, immunization reminders, and post-hospital discharge follow-up.

B. OPT-OUT REQUIREMENTS (47 CFR § 64.1200(b)(2),(3))

For any calls made pursuant the exemptions described in Section A above, the artificial or prerecorded voice message must include a telephone number that permits any individual to make a do-not-call request during regular business hours. Additionally, for any calls made where the artificial or prerecorded voice telephone message is made pursuant to the exemptions described in Section A, callers must provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the consumer to make a do-not-call request, and briefly explain how to use such mechanism, within two (2) seconds of providing the identification information including the identity of the business or individual responsible for initiating the call. When the called person elects to opt out of future calls using such mechanism, the mechanism must automatically record the called person's number to the caller's do-not-call list and immediately terminate the call. When the artificial or prerecorded-voice telephone message is left on an answering machine or a voicemail service, this message must also provide a toll-free number that allows the called person to call back at a later time and connect directly to the opt-out mechanism mentioned above and automatically record the called person's number to the caller's do-not-call list.

C. DO-NOT-CALL PRACTICES AND PROCEDURES (47 CFR § 64.1200(d))

Callers must establish a process for maintaining a do-not-call list, comprised of a list of persons who request not to receive such calls made by or on behalf of that person or entity, before they can make any calls pursuant to the exemptions described above. Persons or entities making artificial or prerecorded-voice telephone calls pursuant these exemptions must meet the minimum standards discussed below.

1. Written Policy (47 CFR § 64.1200(d)(1))

Callers must establish a written policy, available upon demand, for maintaining a do-not-call list.

2. Training of Personnel (47 CFR § 64.1200(d)(2))

Callers must provide personnel information and training on the existence and use of the do-not-call list.

3. Recording, Disclosure of Do-Not-Call requests (47 CFR § 64.1200(d)(3))

Callers must record the do-not-call request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made from a residential telephone subscriber. Callers, and those making calls on their behalf, must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made, not to exceed 30 days from the date of the request. If the request is recorded or maintained by a party other than the caller, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. Callers must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

4. Identification of Callers and Telemarketers (47 CFR § 64.1200(d)(4))

Callers must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.

5. Affiliated Persons or Entities (47 CFR § 64.1200(d)(5))

Absent a specific request by the consumer to the contrary, a residential subscriber's do-not-call request applies to the particular entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.

6. Maintenance of Do-Not-Call lists (47 CFR § 64.1200(d)(6))

Callers must maintain a record of a consumer's request not to receive further calls. A do-not-call request must be honored for five years from the time the request is made.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *TCPA Exemptions Order* contains new information collection requirements for callers that make telephone calls to residential lines using an artificial or prerecorded voice message without the prior express consent of the called party, as discussed above.

Callers must keep records in connection with the numerical limits on the number of calls that can be made under the exemptions for non-commercial calls to a residence; commercial calls to a residence that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to a residence; and healthcare-related calls to a residence. Exempted callers must maintain records to ensure that they do not exceed the limitation on the number of such calls that can be made to a called party within the specified timeframes. Callers that wish to exceed the numerical limits imposed on exempted calls must maintain records of the consumer's oral or written consent.

The Commission's rules require that callers making artificial or prerecorded voice message calls pursuant to any of the exemptions described above offer an automated, interactive opt-out mechanism so that consumers can avoid any unwanted calls in the future. In such cases, a caller will need to have opt-out mechanisms in place to accept do-not-call requests and to record and track such opt-out requests in order to avoid making any additional calls to those consumers. Callers must provide a telephone number in the message to allow a consumer to register his or her do-not-call request in response to that call. As outlined in the rules, callers will have up to 30 days to honor a residential subscriber's do-not-call request and ensure that they no longer call the residential subscriber's telephone number. While these rules will

require callers keep records associated with the number of calls they make to a particular called party and to track opt-out requests from consumers, callers are not required to routinely report these records to the Commission.

IV. IMPLEMENTATION DATE

The rules in the *TCPA Exemptions Order* shall become effective on July 20, 2023.[6]

V. INTERNET LINKS

A copy of the *TCPA Exemptions Order*, is available at: https://www.fcc.gov/document/fcc-further-limits-robocalls-pursuant-traced-act.

A copy of the Federal Register Summary of the *TCPA Exemptions Order* is available at: https://www.govinfo.gov/content/pkg/FR-2021-02-25/pdf/2021-01190.pdf.

A copy of the *TCPA Exemptions Order on Reconsideration* is available at: https://www.fcc.gov/document/fcc-affirms-three-call-limit-robocalls-residential-lines.

A copy of the Federal Register Summary of the *TCPA Exemptions Order on Reconsideration* is available at: https://www.govinfo.gov/content/pkg/FR-2023-01-20/pdf/2023-00635.pdf.

A copy of the Public Notice announcing the effect date of the amended rules is available at: https://www.fcc.gov/document/fcc-announces-compliance-date-amended-tcpa-rules.

[6] *TCPA Exemptions Order Public Notice*, *supra* note 5.

Federal Communications Commission
Washington, DC 20554

June 5, 2023

DA 23-479

SMALL ENTITY COMPLIANCE GUIDE

Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications

FCC 22-88
PS Docket Nos. 15-80, 13-75; ET Docket No. 04-35
Adopted November 18, 2022

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

Section 1 of the Communications Act of 1934, as amended, charges the Federal Communications Commission (FCC or Commission) with "promoting safety of life and property through the use of wire and radio communications."[1] This statutory objective supports the Commission's institution of outage reporting requirements, codified in part 4 of the Commission's rules, which requires communications service providers to report network outages that exceed specified magnitude and duration thresholds.[2] Outage data allows for critical situational awareness that enables the Commission to be an effective participant in emergency response and service restoration efforts, particularly in the early stages of communications disruption. The Commission collects network outage information in the Network Outage Reporting System (NORS) through reports submitted by communications service providers. In addition to obligations to report service outages to the Commission, the part 4 rules also require service providers to report outage information to potentially affected 911 special facilities, including Public Safety Answering Points (PSAPs).[3]

Part 4 rules currently contain discrete 911 special facility outage notification requirements for originating service providers (OSPs), which includes cable, satellite, wireless, wireline, interconnected VoIP service providers[4], and covered 911 service providers (C911SPs) that deliver traffic directly to 911 special facilities, including PSAPs. The rules impose more stringent reporting requirements on C911SPs in terms of notification content, timing, means, and frequency. For example, with respect to timing and frequency, C911SPs are required to notify 911 special facilities of outages that potentially affect them as soon as possible, but no later than 30 minutes after discovering the outage. OSPs are only required to notify 911 special facilities of outages as soon as possible, without the 30-minute deadline. In addition, C911SPs are required to follow-up with a 911 special facility within two hours of transmitting the initial notification, while there is no follow-up requirement for OSPs. Further, although OSPs and C911SPs are required to notify the 911 special facilities they serve, there is no requirement for those providers to maintain accurate contact information for those 911 special facilities.

In the *911 Reliability Second R&O* in PS Docket Nos. 15-80 and 13-75 and ET Docket No. 04-35,[5] the Commission harmonized the 911 special facility outage reporting rules among OSPs and C911SPs. This rule change will provide more uniform and predictable notifications to 911 special facilities regardless of where in the call transport journey an outage occurs. OSPs and C911SPs will also have clear instructions regarding the content, timing, means, and frequency for required outage notifications to the 911 special facilities they serve.

The *911 Reliability Second R&O* also places a specific requirement on OSPs and C911SPs to develop, maintain, and update annually a list of accurate contact information for the 911 special facilities within their service area. This new rule will reduce the number of misdirected or nondelivered 911 special facility notifications.

Finally, C911SPs are required to annually file a 911 network reliability certification with the Commission. Presently, when the FCC does not receive a certification from a particular C911SP, it expends resources to contact that provider. In some instances, the failure to file is because the C911SP stopped

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[1] 47 U.S.C. § 151.

[2] *See* 47 CFR pt. 4.

[3] *See* 47 CFR § 4.9.

[4] We note that OSP services are not limited to call originations and they must comply with our rules even when they experience an outage in a location other than their call origination networks (*e.g.*, in "middle mile" or wholesale transport network facilities). *911 Reliability Second R&O* at 2, note 5.

[5] *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Improving 911 Reliability*; PS Docket Nos. 15-80 and 13-75, and ET Docket No. 04-35, Second Report and Order, FCC 22-82, released November 18, 2022) (*911 Reliability Second R&O*).

providing service at some point during the prior year. To avoid that wasteful expenditure of Commission resources, the *911 Reliability Second R&O* adopted a rule requiring C911SPs to notify the Commission within 60 days of the day they cease operations.

Small businesses, whether OSPs, C911SPs, or 911 special facilities will benefit from the clarity the new and amended rules provide regarding the 911 special facility outage notification process. 911 special facilities will receive more timely, complete, and informative outage reports from providers. Small businesses that are OSPs or C911SPs will also benefit from the clarity of the outage notification requirements provided by the new and amended rules. Taken together, the rules adopted in the *911 Reliability Second R&O* will make the nation's 911 service more dependable for stakeholders and consumers and the public safer.

II. COMPLIANCE REQUIREMENTS

The *911 Reliability Second R&O* harmonizes the Commission's rules regarding outage reporting requirements for OSPs and C911SPs to 911 special facilities, including PSAPs by amending rule sections 4.9 and 9.19.

A. Outage Reporting Requirements (47 CFR §§ 4.9(a)(4), (c)(2), (e), (f)(4), (g)(1), (h), and (h)(1)-(5)).

OSPs and C911SPs are now required to identify, maintain, and on an annual basis, confirm accurate contact information for the 911 special facilities they serve. This new rule requires providers to utilize "special diligence" to gather the contact information for the 911 special facilities they serve. "Special diligence" is defined as "the diligence expected from a person participating in a particular field of specialty under circumstances like those at issue."[6] The requirements of the amended rules are detailed below.

1. *Timing of the Initial Notification*. The new rules require OSPs to notify potentially affected 911 special facilities of an outage within 30 minutes of discovery of the outage, just as C911SPs do, improving the speed with which OSPs deliver outage notifications to the potentially affected 911 special facilities they serve.
2. *Content of the Notification*. All outage notifications to potentially affected 911 special facilities must contain the following specific items:
    - A unique identifier for each outage, assigned by the provider;
    - The name, telephone number, and email address where the 911 special facility can contact the provider if follow up is necessary;
    - The name of the provider experiencing the outage;
    - The date and time the outage began including relevant time zone information;
    - The types of communication service(s) potentially affected;
    - A description of the geographic area affected by the outage;
    - A statement from the provider explaining how the outage might potentially affect 911 special facilities (*e.g.*, dropped calls or missing metadata);
    - The expected date and time the provider expects service will be restored including relevant time zones;
    - A description of the best known cause of the outage; and
    - A statement of whether the notification is the provider's initial notification, an update to information provided in the initial notification, or a final communication from the provider serving as its final assessment of the outage.

[6] *911 Reliability Second R&O* at 6, n. 26.

3. *Means of Notification*. Absent a written mutual agreement between the parties, OSPs and C911SPs must transmit outage notification to 911 special facilities by telephone and in writing by electronic means.

4. *Timing Notification*. All providers shall provide outage notifications to potentially affected 911 special facilities as soon as possible, but no later than within 30 minutes of the discovery of the outage, whether the outage affects transmission facilities that the provider owns, leases, or otherwise utilizes to provide service.

5. *Follow-up Notification.* Providers are required to communicate additional material information to the affected 911 special facilities as soon as possible after the information becomes available and must continue to provide updates with material information to the 911 special facilities until the outage is repaired and service is completely restored.

B. Reliability of Covered 911 Service Providers (47 CFR § 9.19(d)(4))

C911SPs that cease operations are required to notify the FCC by filing a notification with the FCC no later than 60 days after cessation of service.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The rules adopted in the *911 Reliability Second R&O* contain new information collection requirements for outage recordkeeping and reporting by OSPs and C911SPs. The details and specifics of the reporting and recordkeeping requirements adopted in the *911 Reliability Second R&O* are discussed in Section II of this guide under the Compliance Requirements. Additionally, C911SPs are reminded of their continued annual reliability certification requirement pursuant to 47 CFR § 9.19 (c).

IV. IMPLEMENTATION DATE

The following rules in the *911 Reliability Second R&O* became effective on March 17, 2023: 47 CFR §§ 4.9(c)(2) and (e)(1) which codifies our previous decision to exempt outage reporting to all special offices and facilities for satellite operators and wireless providers, rather than limiting the outage reporting exemption to just airports, and 47 CFR § 9.19(d)(4), which adds the requirement for C911SPs to file a notice with the FCC within 60 days of ceased operations as a service provider.

The following rules in the *911 Reliability Second R&O* require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act: 47 CFR §§ 4.9(a)(4), (c)(2), (e), (f)(4), (g)(1), (h), and (h)(1)-(5). These rules harmonize the 911 outage reporting requirements for OSPs and C911SPs and shall become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective date.

V. INTERNET LINKS

A copy of the *911 Reliability Second R&O* is available at:

https://docs.fcc.gov/public/attachments/FCC-22-88A1.pdf.

A copy of the Federal Register Summary of the *911 Reliability Second R&O* is available at:

https://www.federalregister.gov/d/2023-01479.

PUBLIC NOTICE

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

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

DA 23-480
Released: June 5, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU RESCHEDULES HURRICANE SEASON REFRESHER FOR FILERS IN THE DISASTER INFORMATION REPORTING SYSTEM (DIRS) TO JULY 6-7, 2023

The Federal Communications Commission's (FCC) Public Safety and Homeland Security Bureau (Bureau) is rescheduling its annual Disaster Information Reporting System (DIRS) refresher for DIRS filers to July 6 and 7, 2023 due to the ongoing DIRS activation for Typhoon Mawar.

During times of crisis, such as hurricanes, wildfires, and earthquakes, the FCC may activate DIRS. Communications providers can use DIRS to quickly and efficiently report the operational status of their service and infrastructure to the FCC, as well as to request assistance. The planned refresher will help ensure that communications providers, including broadcast, cable, satellite, wireless, and wireline providers, can access and file in the DIRS system; train new employees to become familiar with the DIRS reporting process; and update DIRS contact information.

Service providers that have not previously participated in DIRS reporting are encouraged to take advantage of this opportunity to register for DIRS and become familiar with the system. Providers can create an account at the following link: https://www.fcc.gov/nors/disaster/.

The refresher will include a simulated event, commencing with the Bureau sending a mock activation letter on July 5 to all registered DIRS participants. The mock activation letter will provide a list of pre-selected counties that form the disaster area for this practice event. Providers will be asked to report data on any of their communications assets (e.g., broadcast, cable, satellite, wireless, and wireline) in the affected area. As this is only a simulated event, the Bureau does not expect to receive actual counts of outages. If a provider does not have any communications assets in the affected counties, it can still participate by reporting notional data for the pre-selected counties.

We ask that event participants provide their initial data sets by 10:00 a.m. EDT on July 6 with an updated report filed by July 7 at 10:00 a.m. EDT. The Bureau will send a deactivation letter by 3:00 p.m. EDT on July 7 notifying participants that the simulated event has been completed.

Providers wishing to participate should email michael.caiafa@fcc.gov and gerald.english@fcc.gov by July 26th with the following information:

1. Name of the provider;
2. Names of all participants from the provider;
3. Email and phone numbers of all participants from the provider; and
4. Specific geographic areas (counties, state) that the provider would like to have included in the disaster area for this exercise (optional).

There is no response necessary for providers that do not wish to participate.

Questions regarding this prep or DIRS generally should be directed to the following in the Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division:

- Michael Caiafa: michael.caiafa@fcc.gov or (202) 418-1311
- Jay English: gerald.english@fcc.gov or (202) 418-0432

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 23-481
Released: June 5, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-138

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 Certain Assets of Al-Call, Inc. and ATC Broadband, LLC to LiveOak Fiber, LLC,
WC Docket No. 23-138, Public Notice, DA 23-373 (WCB 2023).

Effective Grant Date: June 5, 2023

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809, Competition Policy Division, Wireline Competition Bureau.

-FCC-

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

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

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 23-482
Released: June 6, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU UPDATES GUIDANCE FOR FILING STATE EMERGENCY ALERT SYSTEM (EAS) PLANS AND MONITORING ASSIGNMENT AMENDMENTS IN THE ALERT REPORTING SYSTEM (ARS)

PS Docket 15-94

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces changes to the process for State Emergency Communications Committees (SECCs) to file and seek the Bureau's approval of amendments to State Emergency Alert System (EAS) Plans (EAS Plans) in the Alert Reporting System (ARS) database.[1] Specifically, the changes described in this Public Notice will allow for filing of updates to EAS Plans throughout the year and will streamline the Bureau's review and approval process for updated plans. In addition, this Public Notice provides guidance for SECCs on amending their EAS plans to seek approval for updated monitoring assignments.

Updated ARS Plans May Now Be Submitted Year-Round

SECCs are required to update their State EAS Plans and submit them for Commission review and approval "not less frequently than annually."[2] Previously, SECCs could file EAS Plans in ARS for review and approval only once annually. Once the Bureau approved a filed EAS Plan, the SECC could make and save changes to it in ARS but could not submit such changes for Bureau approval until 30 days prior to the date when its annual update was due.

The Bureau now has implemented changes to ARS to enable SECCs to submit changes to their previously approved EAS Plans and seek the Bureau's approval of such changes at any time. Bureau staff will review such submissions as they are filed.

Use of ARS for Amending Monitoring Assignments

This ARS system enhancement will allow SECCs to submit and seek Bureau approval for updated monitoring assignment amendments in their EAS Plans at any time throughout the year. This feature will enable SECCs to update their EAS Plans for new monitoring assignments that may occur at

[1] State EAS Plans describe EAS operations and delineate the responsibilities of EAS Participants (*i.e.*, broadcast stations, cable systems, and certain other entities) to monitor signals from other, specified EAS Participants in order to receive and transmit certain emergency alert messages. ARS is the online system that SECCs use to file their State EAS Plans and that the Bureau uses to review and approve them. *See* 47 CFR §§ 11.2(b), 11.11(a) (defining and listing categories of EAS Participants that are subject to EAS rules); *id.* § 11.21 (specifying contents of State EAS Plans); *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, 33 FCC Rcd 3627 (2018) (establishing ARS); *PSHSB Announces Deadline for Compliance with State EAS Plan Content Requirements and EAS Designations*, Public Notice, PS Docket 15-94, DA 21-869 (July 20, 2021) (announcing July 5, 2022 deadline for compliance with 2018 revisions of sections 11.18 and 11.21(a)(1)-(7)).

[2] 47 U.S.C. § 1206(b)(1)(B); *see also* 47 CFR § 11.21.

irregular intervals and keep their plans up to date. It also will make it largely unnecessary for SECCs or EAS Participants[3] to request waivers[4] to obtain approval of such changes before the annual update. Although the traditional monitoring waiver process will continue to be available, the Bureau encourages SECCs to use the newly automated EAS Plan amendment process incorporated into ARS whenever possible.[5] The Bureau also urges EAS Participants to begin monitoring new EAS sources that they can reach immediately when they can no longer receive an old source reliably, without waiting for formal Bureau approval, to ensure the EAS system is consistently functioning during emergencies.

This monitoring assignment amendment option will be available to SECCs that are submitting or have already submitted complete EAS Plans in ARS. A monitoring assignment amendment submission will be treated as a newly submitted EAS Plan. If the Bureau approves the submission, the SECC will be considered to have satisfied its annual filing requirement for another year, and its next annual update will be due one year later.

Descriptive Narrative Attachment. In order to ensure prompt review and approval of monitoring changes, the Bureau recommends that SECCs submitting monitoring amendments via ARS include an attachment identifying the specific EAS Participants whose monitoring assignments are being modified and the new assignments for which they seek approval.

Planned Monitoring Assignment Changes

In addition, we clarify that any EAS Plan filing – whether an annual updated plan or an amendment to specific monitoring assignments outside the regular update cycle – may contain monitoring assignments that EAS Participants are in the process of carrying out but have not yet fully implemented. For example, if the SECC has assigned or is in the process of assigning a satellite monitoring source to an EAS Participant, but the EAS Participant has not yet acquired the receiver equipment for that signal, the SECC may include that planned assignment in its EAS Plan submission in the appropriate monitoring table. SECCs submitting such planned monitoring assignments should indicate in an attachment which assignment changes have not yet been implemented and the date by which completion is expected. If, during the process of implementation, the SECC's actual assignments to EAS Participants change from what was planned and reported, SECCs should promptly update and resubmit their EAS Plans to reflect the final monitoring assignments.

Simplifying EAS Monitoring Assignments

For purposes of expediting approval of proposed State EAS Plans and amendments, the Bureau further recommends that SECCs configure their monitoring assignments by assigning as many EAS Participants as possible to *directly* monitor (with no intermediate links) one or more sources that receive the National Emergency Message (EAN) signal directly from the Federal Emergency Management Agency (FEMA). By way of background, participants in the National Public Warning System (NPWS) – previously known as the Primary Entry Point (PEP) system – deliver the EAN alert from FEMA to the

[3] EAS Participants are the entities that are required to comply with the Commission's EAS rules, e.g., analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems. 47 CFR §§ 11.2(b), 11.11(a)-(c).

[4] *See* 47 CFR § 11.52(d)(3) ("If the required EAS message sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the Chief, Public Safety and Homeland Security Bureau. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment").

[5] When doing so, the SECC also should provide notice of the proposed changed monitoring assignments to any EAS Participants that, under the terms of the existing EAS Plan, are assigned to monitor (directly or indirectly) the signals transmitted by the EAS Participant whose assignments would be changed by the proposal. The ARS automatically notifies Bureau staff when such filings are submitted.

EAS Participants.[6] FEMA has designated 77 broadcast radio stations that collectively serve 90 percent of the nation's population, as well as three satellite networks, each covering virtually the entire continental United States, to play this role.[7] The broad geographic availability of these sources should make it possible for most EAS Participants to monitor signals from one or more of them directly, regardless of whether such EAS Participants are designated as Local Primaries (LPs), Participating Nationals (PNs), or any other status in the EAS Plan. The Bureau recommends that EAS Plans, whenever possible, minimize the number of intermediate links for EAS Participants to monitor such sources. Appendix A to this Public Notice illustrates recommended configurations of monitoring assignments.

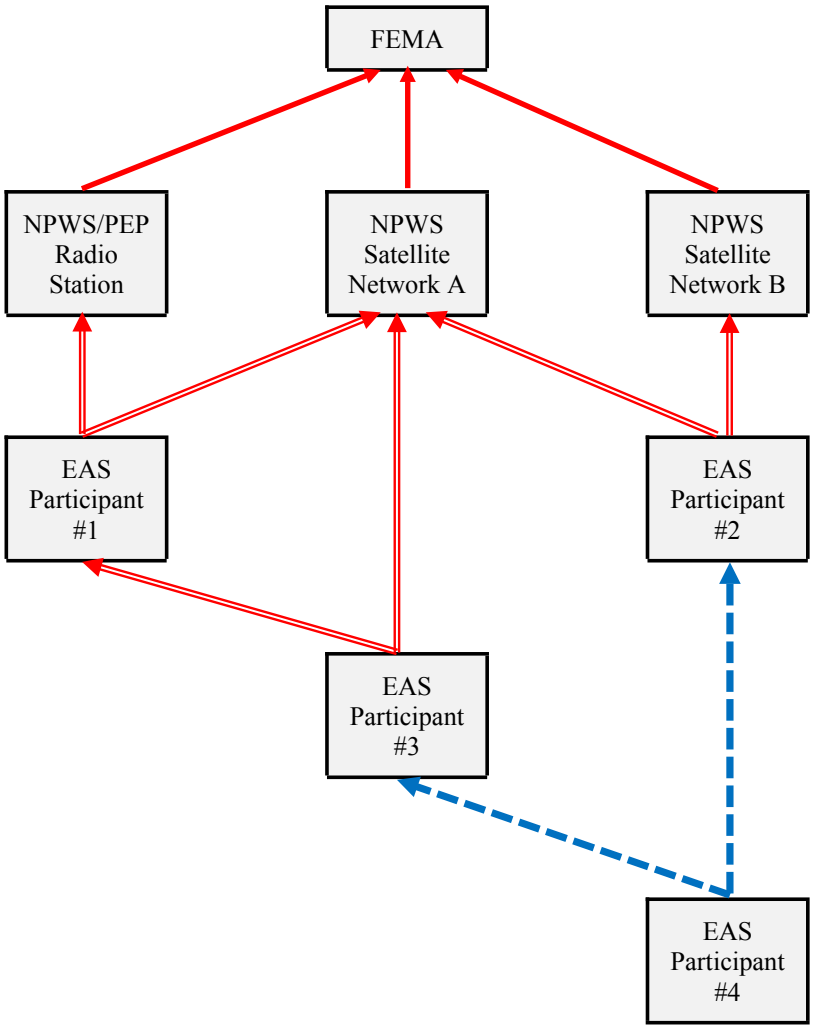
For questions regarding this Public Notice, please contact Maureen Bizhko, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-0011 or Maureen.Bizhko@fcc.gov, or Chris Fedeli, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-1514 or Christopher.Fedeli@fcc.gov.

- FCC -

[6] *See* FEMA, "Broadcasters and Wireless Providers," National Public Warning System, available at https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/broadcasters-wireless (accessed June 5, 2023).

[7] *See* FEMA, "FEMA and Audacy's WWL Radio Unveil New Emergency Broadcast Studio," (June 28, 2022), at 4 ("Currently, there are 77 PEP stations that reach more than 90 percent of the U.S. population…."), available at https://www.fema.gov/press-release/20220628/fema-and-audacys-wwl-radio-unveil-new-emergency-broadcast-studio.

Appendix A: Recommended Monitoring Assignment Configurations



The diagram above shows two EAS Participants that directly monitor signals from two FEMA-designated NPWS sources: EAS Participant #1 monitors an NPWS/PEP radio station and an NPWS satellite network, while EAS Participant #2 monitors two different NPWS satellite networks. The diagram also shows a third entity (EAS Participant #3) that directly monitors signals from one NPWS source (a satellite network) and indirectly monitors signals from a different NPWS source by directly monitoring EAS Participant #1, which in turn directly monitors the NPWS/PEP radio station.

While the rules permit assignments like those shown for EAS Participant #4 in the illustration, which directly monitors signals from two EAS Participants with diverse connections to different NPWS sources (thus avoiding any potential single points of failure), such arrangements are not ideal. If possible, most EAS Participants should have at least one direct monitoring connection to an NPWS source, like EAS Participant #3 in the diagram; or two such direct connections, like EAS Participants #1 and #2. As shown in the diagram, EAS Participant #4 has no such direct connections and therefore it needs multiple intermediate connections to pick up the EAN signal from FEMA. While this arrangement is permissible under the rules, it is not preferred because it is more likely to result in audio signal attenuation or loss and increases the risk of transmission failure through multiplication of links.

Federal Communications Commission
Washington, D.C. 20554

June 7, 2023

DA 23-483
In Reply Refer to:
1800B3-IB
Released: **June 7, 2023**

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In re: **NCE MX Group 55**

Key West Radio
New NCE FM, Key West, FL
Facility ID No. 767101
File No. 0000167215

Ethree Group, Inc.
New NCE FM, Big Pine, FL
Facility ID No. 768318
Application File No. 0000166738

Specialized Educational Broadcasting
New NCE FM, Key West, FL
Facility ID No. 766298
Application File No. 0000166812

Frequency Zero, Inc.
New NCE FM, Stock Island, FL
Facility ID No. 765461
Application File No. 0000166105

Petition to Deny

Dear Counsel and Applicants:

The Media Bureau (Bureau) has before it: (1) an application on Form 2100, Schedule 340 from Key West Radio (KWR), filed on November 9, 2021, for authority to construct a new noncommercial

educational (NCE) FM station at Key West, Florida,[1] which the Commission tentatively selected over several mutually-exclusive applications;[2] (2) a Petition to Deny filed by Frequency Zero, Inc. (FZI),[3] a mutually-exclusive (MX) applicant that seeks to construct a new NCE FM station at Stock Island, Florida;[4] (3) MX applications from two other applicants to construct stations in nearby communities;[5] and (4) responsive pleadings.[6] For the reasons set forth below, we grant the Petition, dismiss the KWR Application, and accept the FZI Application as the new tentative selectee. In addition, we are applying a new disclosure requirement for future applications filed within the next ten years by certain persons associated with KWR and an entity known as 305 Community Radio (305).

Background. Applications for new broadcast stations must include all information requested on the application form as well as any additional information the Commission may deem necessary.[7] An application without required information is defective, and the Bureau will, therefore, dismiss it. At issue in the instant proceeding is whether to dismiss the KWR Application for failure to include qualifications-related information that the Bureau required certain individuals allegedly associated with KWR to file with all applications attributable to them.

The KWR Application is part of "Group 55," which consists of four MX applications to construct new NCE FM stations in the Florida Keys.[8] The Bureau can grant only one of these applications because they are in technical conflict. In such circumstances, the Commission conducts a paper hearing using a point system and tiebreakers to identify the applicant that best meets criteria set forth in Commission rules (Rules).[9] The applicant with the highest point total and/or best position in the tiebreaker becomes the group's "tentative selectee." The selection is only tentative because the Bureau must consider additional factors, including any petitions to deny, to determine whether the "tentative selectee's" application is grantable. The Commission tentatively selected KWR by means of a tiebreaker.[10]

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[1] Application File No. 0000167215 (rec. Nov. 9, 2021) (KWR Application).

[2] *See Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations,* Memorandum Opinion and Order, FCC 23-05 (rel. Jan. 24, 2023) (*Comparative Order*).

[3] FZI, Petition to Deny, Pleading File No. 0000211163 (rec. Feb. 22, 2023) (Petition).

[4] Application File No. 0000166105 (rec. Nov. 3, 2021) (FZI Application).

[5] Ethree Group, Inc. applied to serve Big Pine (Application File No. 0000166738, rec. Dec. 28, 2021). Specialized Educational Broadcasting applied to serve Key West (Application File No. 0000166812, rec. Jan. 19, 2022).

[6] KWR, Opposition to Petition to Deny, Pleading File No. 0000212235 (rec. Mar. 8, 2023) (Opposition); FZI, Reply to Opposition to Petition to Deny, Pleading File No. 0000212374 (rec. Mar. 10, 2023) (Reply).

[7] 47 CFR § 73.3514.

[8] *See 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).

[9] 47 CFR § 73.7003. An applicant's maximum position is established upon close of the relevant filing window. Any changes an applicant makes after that date can decrease, but not enhance, its position.

[10] *See Comparative Order,* para. 44. The initial point system analysis in Group 55 was not determinative because each applicant received the same point tally, *i.e.,* two points each for "diversity of ownership." *Id.,* para. 43; 47 CFR § 73.7003(b)(2) (awarding points to applicants without an attributable interest in another NCE station serving a portion of the same area). Nor was the first tiebreaker (fewest authorizations) determinative because each applicant certified that it did not hold any existing radio authorizations. *See id.* § 73.7003(c)(1). KWR prevailed in a second

FZI now argues that the Bureau must dismiss the KWR Application for failure to disclose all parties to the application and, in particular, omitting persons with unresolved potential qualifications issues from a 2019 Commission investigation.[11] The investigation concerned allegations that 305, run by brothers Peter L. Stebbins (Peter) and John H. Stebbins (John), together with an individual named John Viera, operated a Low Power FM (LPFM) station at two unauthorized locations in Miami while representing to the Commission that the station was broadcasting from authorized sites at which it had never constructed. 305 surrendered its LPFM license through a letter in which its counsel argued that the matter was now moot. However, the Bureau issued a letter (Miami Letter)[12] stating that the matters raised in the LPFM case were not moot, because they could be relevant to determining qualifications[13] in future broadcast applications by John, Peter, and others with attributable interests in 305, and thus required any such application filed within the next five years to include copies of both the Miami Letter and the preceding Bureau inquiry letter into the LPFM station's operating history (the Miami LOI).[14] This requirement would alert Commission staff and interested parties of potential issues relevant to the applicant's qualifications.

Three members of the Stebbins family were listed in the KWR Application as the officers and directors of KWR (*i.e.,* Bertrand and Diane Stebbins and Fred Stebbins – respectively, the parents and brother of John and Peter).[15] The application did not include (and did not reference) either the Miami Letter or the Miami LOI, as would have been required if John and/or Peter held attributable interests. FZI contends that John and Peter nevertheless are connected to and, in fact, control KWR. First, it alleges that John was listed as an officer of KWR in articles of incorporation filed in 2021 with the State of Florida and a 2022 corporate reinstatement.[16] Second, it alleges that the primary e-mail address and telephone contact number listed on the KWR Application are associated with companies run by Peter.[17] FZI alleges that KWR misrepresented the identity of the parties to the KWR Application in order to circumvent the Miami Letter's disclosure requirement and thereby to conceal potentially disqualifying issues.[18]

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tiebreaker (fewest pending applications) because it had only one pending application whereas FZI had two applications, and the other applicants had more. *See id.* § 73.7003(c)(2); *Comparative Order,* para. 44.

[11] Petition at 2.

[12] *See Michael W. Richards, Esq.,* Letter Order, File No. BLL-20180830AAW (MB Sept. 9, 2019).

[13] *See generally Policy Regarding Character Qualifications in Broadcast Licensing,* Policy Statement and Order, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *further recon. granted in part*, 7 FCC Rcd 6564 (1992).

[14] Specifically, the Miami Letter stated: "we will require 305 and its principals to alert the Commission of this matter *in any such application*. Specifically, 305 (Peter Stebbins, John Stebbins, and John Viera as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112) SHALL SUBMIT a copy of this *Letter Order* and of the July 19, 2019 operational inquiry *with every facilities application*--FCC Form 301, 309, 318, *340*, or 349--or any assignment of license/transfer of control application--FCC Form 314, 315, or 345--it files with the Commission for a period of five years from the date of this *Letter Order.*" Miami Letter at 1 (emphasis added).

[15] The KWR Application does not list John or Peter as officers or directors of KWR.

[16] KWR was incorporated in 2021. Its articles of incorporation filed with the State of Florida listed Bertrand Stebbins as its registered agent, incorporator, and President, John as Vice President, and Fred Stebbins as Secretary. Petition at 2, citing Florida File No. N21000012460. Peter is not mentioned in the KWR corporate filings.

[17] Petition at 5-6.

[18] *Id.* at 2.

KWR responds that it has no connection to 305 and, thus, is not subject to the Miami Letter's requirements.[19] It acknowledges that the three principals of KWR are related to Peter and John but argues that a familial relationship, by itself, does not establish an attributable interest.[20] Rather, it contends that a person has an attributable interest only if their ownership or position is sufficient to exert influence or control over station finances, programming, or personnel, and that neither Peter nor John has any such interest in KWR.[21] According to KWR, Peter simply provides unpaid consulting services to the company, and FZI's allegations of greater involvement are speculative.[22] Although KWR acknowledges that it listed John as a board member in corporate filings with the State of Florida before and after filing the KWR Application with the Commission, it maintains this was a mistake caused by hasty filing and not out of any intent to deceive.[23] It also states that it corrected the error in March 2023 by filing a Florida annual report that substituted Diane Stebbins for John.[24] FZI disputes KWR's claim of mistake and stresses that KWR twice identified John as an officer.[25]

Discussion. We grant the Petition and dismiss the KWR Application pursuant to section 73.3566 of the Rules.[26] Applications to construct new NCE stations must disclose all parties to the application. Corporate officers are parties.[27] KWR's articles of incorporation filed with a state government in 2021, approximately two weeks before it filed the KWR Application with the Commission, named John as its Vice President.[28] A corporate reinstatement filed with Florida in October 2022 continues to list John in that position.[29] John's position as a corporate officer is dispositive of his having an attributable interest in

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[19] Opposition at 1. KWR filed its Opposition four days late but requested a waiver of the due date. *See* 47 CFR §§ 73.3584, 1.45. KWR contends that a waiver would be in the public interest because it would limit the number of issues that might be raised in any appeal. Opposition at 1. FZI opposes the waiver request. Reply at 2. We grant the waiver and consider the Opposition because the information therein provides a more complete record, and we otherwise would likely have issued a letter of inquiry requesting similar information.

[20] Opposition at 1-2.

[21] *Id.* at 2, citing *Pressly Enterprises, LLC,* Memorandum Opinion and Order, 17 FCC Rcd 14079 (2002); *Petroleum V. Nasby Corp.,* Memorandum Opinion and Order, 11 FCC Rcd 3494 (1996); *KTRB Broad. Co.,* Memorandum Opinion and Order, 46 FCC 2d 605 (1974), *recon. denied,* 48 FCC 2d 635 (1974).

[22] Opposition at 3, 5.

[23] *Id.*

[24] *Id.* at 3. Thus, as of March 2023 the ownership information filed with Florida matches that presented in the KWR Application.

[25] Reply at 3. FZI notes that KWR listed John as Vice President both in articles of incorporation and a corporate reinstatement, which Bertrand Stebbins certified to be true and accurate, and only removed John as an officer on March 1, 2023, after FZI raised the matter in the Petition. *Id.*

[26] 47 CFR § 73.3566.

[27] The instructions to the Schedule 340 state that an applicant must identify the "parties to the application." Specifically, with regard to non-stock corporations or other non-stock entities, the instructions explain: "The applicant, the parent and subsidiary entities of the applicant, and the officers, directors, and governing board members of the applicant and its parent and subsidiary entities are considered to be parties to the application."

[28] Florida File No. N21000012460, Article VII (Oct. 25, 2021), reproduced in relevant part as Petition, Exh. D, available in full at https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2021%5C1025%5C80531308.tif&documentNumber=N21000012460 (accessed May 8, 2023).

[29] Reply, Exhibit A, Florida Not for Profit Corp. Reinstatement (Oct. 2, 2022).

KWR at the time of filing the application.[30] KWR was, thus, required to include documents associated with the Miami Letter as part of the KWR Application at the time of filing.

We reject KWR's contention that its identification of John as its Vice President was mistaken and, therefore, immaterial.[31] KWR emphasizes that John never voted on any corporate matter, was not an employee of KWR, and had no financial interest in the company.[32] Essentially, it contends that John never really performed any duties as Vice President, that his name was erroneously included on corporate documents, and that it corrected that error by substituting Diane Stebbins in a March 2023 Florida filing.[33] Even assuming *arguendo* that each of these claims is true, the Bureau does not limit its consideration to an applicant's *de facto* control but also considers its *de jure* corporate structure as of the date of application.[34] Two documents KWR filed with Florida, and not contradicted by any other corporate documents pertaining to that time period, reflect that John was an officer of KWR as of November 9, 2021, when the KWR Application was submitted.

The KWR Application, by omitting John, did not accurately reflect KWR's *de jure* corporate structure at the time of filing. KWR's revision of its officers in March 2023 is immaterial to the KWR Application as filed in 2021. The Bureau has previously rejected a suggestion to ignore relevant NCE corporate documents based on alleged inaccuracies.[35] The Bureau will not allow an applicant to "simply disavow its duly adopted corporate articles and Bylaws, claiming extra-legal considerations, in order to avoid adverse legal consequences."[36] To hold otherwise would "establish a dangerous precedent."[37] Given John's position as a corporate officer, the KWR Application was subject to the Miami Letter's requirement to include the Miami Letter and the Miami LOI as part of any FCC facilities application attributable to him, including a Schedule 340 application such as the KWR Application, filed within five years of the Miami Letter.[38] We dismiss the KWR Application for failure to do so. We, thus, need not resolve FZI's other allegations, including the purported role of Peter, whether KWR had any intent to conceal, and whether KWR has the requisite qualifications to hold a broadcast license. As shown below,

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[30] This finding is not dependent on any family relationship between John and other members of the corporation.

[31] We note that the same person, KWR's President Bertrand Stebbins, certified to the truth and accuracy of the Florida corporate documents naming John as Vice President as well as to that of the KWR Application filed with the Commission. The certification in the Commission's KWR Application is under penalty of perjury. The signature on the Florida reinstatement document states that it has the same legal effect as a statement under oath and that on the Articles of Incorporation acknowledges that submission of false information to the Florida Secretary of State is a felony under state law. While KWR asserts that the two Florida documents were erroneous because KWR submitted them hastily, that claim is of dubious credibility given Bertrand Stebbins' signature acknowledging significant potential legal consequences of inaccurate statements made to Florida.

[32] Opposition at 3, 5.

[33] *See id.*

[34] *See Stuart W. Nolan, Jr., Esq.,* Letter Order, 21 FCC Rcd 6155, 6161 (MB 2011) (disqualifying NCE applicant that exceeded foreign ownership limits in governing documents filed with State of Oklahoma despite applicant's claim that the documents did not accurately reflect its corporate functioning). *De jure* structure is particularly relevant in the instant case where the applicant was incorporated only two weeks before the application and, thus, would not be expected to have conducted a lot of business within that time period.

[35] *Id.* at 6161.

[36] *Id.*

[37] *Id.*

[38] The KWR Application did not include a request for waiver of the Miami Letter's disclosure requirement.

however, such matters might also be relevant to future applications and we, thus, are imposing a new disclosure requirement applying to FCC applications filed in the next ten years by the principals of 305 and KWR or any entity in which any of them hold an interest.

We further note that the defect in the KWR Application is fatal and cannot be cured by a corrective amendment. Section 73.3566(a) of the Rules states: "Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed."[39] Section 73.3566(b) provides: "If an applicant is requested by the FCC to file any additional documents or information not included in the prescribed application form, a failure to comply with such request will be deemed to render the application defective, and such application will be dismissed."[40] Because the KWR Application omitted the documents prescribed in the Miami Letter, and did not contemporaneously request a waiver of the Miami Letter, the application is defective and must be dismissed. The Miami Letter explicitly established that the disclosure requirement had to be met at the time of filing by alerting the Commission "in any such application" and through the filing of required documents "with every facilities application."[41] Removal of John as a corporate officer at a later date and/or a post-filing amendment of the KWR Application to include the documents required by the Miami Letter cannot remedy a failure to provide notice at the time the application was filed. Nor would it serve the same purpose of the Miami Letter's requirement to provide an alert immediately upon filing. In such circumstances, the original tentative selectee is disqualified, and the applicant with the next highest point/tiebreaker position is named as the new tentative selectee.[42]

FZI is the applicant with the next best position in Group 55 because, as discussed above, all applicants were equivalent in a point system analysis and first tiebreaker but FZI had the fewest (two) attributable applications and is, thus, favored over the remaining applicants in a second tiebreaker.[43] We name FZI the new tentative selectee in Group 55, and accept the FZI Application for filing.[44]

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[39] 47 CFR § 73.3566(a).

[40] *Id.* § 73.3566(b).

[41] *See supra,* note 14.

[42] 47 CFR § 73.7004(d).

[43] *See supra,* note 9; *Comparative Order,* para. 44.

[44] The naming of a new tentative selectee in this proceeding is a routine action consistent with the Bureau's authority and Commission directives because the Bureau is simply applying the Commission's existing analysis to the applicants that remain following dismissal of a defective application. *See Comparative Order*, 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. The staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists."). *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

We further note that the matters raised in this proceeding dovetail with the disclosure requirements for 305 in the Miami Letter and are potentially relevant to determining the qualifications of KWR and its principals in any future applications they may file. We, therefore, in the ordering clauses below, adopt a new disclosure requirement that builds upon that of the Miami Letter by adding KWR and its principals, and extending the disclosure term from five to ten years.[45]

Conclusion/Action. Accordingly, IT IS ORDERED THAT the application of KWR to construct a new NCE station at Key West, FL (File No. 0000167215) IS DISMISSED.

IT IS FURTHER ORDERED THAT the application of Frequency Zero, Inc. (File No. 0000166105) IS TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Stock Island, Florida and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive applications of Ethree Group, Inc. (File No. 0000166738) and Specialized Educational Broadcasting (File No. 0000166812) and TO GRANT the application of Frequency Zero, Inc. (File No. 0000166105) CONDITIONED UPON the selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

IT IS FURTHER ORDERED THAT 305 Community Radio, Key West Radio, and the principals of each must alert the Commission of these matters in any application any of them file within ten years from the date of this letter. Specifically, 305 (Peter Stebbins, John Stebbins, and John Viera) and KWR as revised (Bertrand Stebbins, Diane Stebbins, and Fred Stebbins) as well as any entity in which any of them holds an interest that is within the scope of the ownership, control and attribution standards set forth in either 47 CFR § 1.2112 or 47 CFR § 73.3555 SHALL SUBMIT a copy of three documents: (1) this *Letter Order;* (2) a September 9, 2019 *Letter Order* concerning a Miami, FL Low Power FM station licensed to 305 (File No. BLL-20180830AAW); and (3) a July 19, 2019 operational inquiry for that same Miami LPFM station, with every facilities application--Schedule 301, 309, 318, 340, or 349--or any assignment of license/transfer of control application--Schedule 314, 315, or 345--it files with the Commission for a period of ten years from the date of this *Letter Order*.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc:

Charles E Keiler
Ethree Group, Inc.

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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)).

[45] This new disclosure requirement will replace that established in the Miami Letter.

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PUBLIC NOTICE

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DA No. 23-484

Report No. TEL-02281 **Thursday June 8, 2023**

International Authorizations Granted

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

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

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

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

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

Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-214-20220325-00043 E Advanced Network Communications, LLC

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 06/02/2023

Advanced Network Communications, LLC (ANC) filed an application for authority to provide resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(2). On May 18, 2023, ANC filed a supplement.

ANC began providing international service in 2002 without prior Commission authorization. At that time, ANC was a wholly owned subsidiary of Schaller Telephone Company (Schaller), both Iowa entities. The Glen Reimers Trust, an Iowa trust, held a 70.27% interest in ANC. Joann Reimers was the trustee, and Steven Reimers and Memory Reimers were the beneficiaries, all U.S. citizens. Steven Reimers also held a direct 23.65% interest in ANC.

On September 1, 2005, ANC became a joint venture held equally (50% each) by Schaller and Long Lines, LLC (Long Lines). See ITC-T/C-20220427-00057. Schaller is currently owned by the Steven S. Reimers Family Trust (Reimers Family Trust) (60%), an Iowa trust, and Melissa Kestel (40%), a U.S. citizen. Joann Reimers is the trustee of the Reimers Family Trust and Melissa Kestel is the beneficiary. Long Lines, a Delaware entity, is a wholly owned subsidiary of IH Orbitel, Inc, which in turn is wholly owned by Schurz Communications, Inc. (SCI), both Indiana entities. The Schurz Communications, Inc. Voting Trust (Voting Trust), an Indiana trust, holds a 75.17% interest in SCI. The trustees of the Voting Trust are Todd F. Schurz, Scott C. Schurz, and Franklin Schurz, all U.S. citizens. The beneficiaries of the Voting Trust with a 10% or greater interest are Franklin D. Schurz, Jr. (28%), Kathryn F. Schurz (19%), Mary Ann Schurz (19%), and Laura E. Ray (15%), all U.S. citizens. According to the Applicant, no other individual or entity holds a 10% or greater interest in ANC.

ANC filed a request for Special Temporary Authority (STA) related to this application (ITC-STA-20230425-00051), which was granted on May 10, 2023. See also ITC-STA-20220411-00050.

Grant of this application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

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

ITC-214-20230410-00045 E AFFORDABLE COMMUNICATION SOLUTIONS LLC

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 06/02/2023

Affordable Communication Solutions, LLC (Affordable Communications) filed an application for authority to provide resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(2).

Affordable Communications, a Florida limited liability company, is owned by Alexander Dobarganes (50%) and Ivan Pomereda (50%), both U.S. citizens.

ITC-214-20230425-00054 E Bytes Mobile LLC

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 06/02/2023

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

Bytes Mobile, a Texas limited liability company, is owned 100% by Hardik Trivedi, a U.S. citizen.

ITC-T/C-20211228-00204 E Advanced Network Communications, LLC

Transfer of Control

Grant of Authority Date of Action: 06/02/2023

Current Licensee: Advanced Network Communications, LLC

FROM: SCHALLER TELEPHONE CO.

TO: Long Lines, LLC

Advanced Network Communications, LLC (ANC), an Iowa limited liability company that holds an international section 214 authorization (ITC-214-20220325-00043), filed an application for the transfer of control of ANC from Schaller Telephone Company (Schaller) to Long Lines, LLC (Long Lines). Schaller and Long Lines currently each own 50% of ANC. Long Lines will acquire the Schaller interest and will then hold a 100% interest in ANC.

Long Lines, an Delaware entity, is a wholly owned subsidiary of IH Orbitel, Inc, which in turn is wholly owned by Schurz Communications, Inc. (SCI), both Indiana entities. The Schurz Communications, Inc. Voting Trust (Voting Trust), an Indiana trust, holds a 75.17% interest in SCI. The trustees of the Voting Trust are Todd F. Schurz, Scott C. Schurz, and Franklin Schurz, all U.S. citizens. The beneficiaries of the Voting Trust with a 10% or greater interest are Franklin D. Schurz, Jr. (28%), Kathryn F. Schurz (19%), Mary Ann Schurz (19%), and Laura E. Ray (15%), all U.S. citizens. According to the Applicants, no other individual or entity will hold a 10% or greater interest in ANC.

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

ITC-T/C-20220427-00057 P Advanced Network Communications, LLC

Transfer of Control

Grant of Authority Date of Action: 06/02/2023

Current Licensee: Advanced Network Communications, LLC

FROM: SCHALLER TELEPHONE CO.

TO: Long Lines, LLC

Advanced Network Communications, LLC (ANC), an Iowa limited liability company that holds an international section 214 authorization (ITC-214-2022-325-00043), filed an application for the transfer of control of ANC from Schaller Telephone Company (Schaller) to Long Lines, LLC (Long Lines). On May 18, 2023, the Applicants filed a supplement.

Prior to the transaction, ANC was a wholly owned subsidiary of Schaller. On September 1, 2005, without prior Commission consent, Long Lines acquired a 50% interest in ANC from Schaller. The remaining 50% interest in ANC was divided between Schaller (27.5%), and Comserv, Ltd. (Comserv) (22.5%), both Iowa entities. Schaller held a 99.2% interest in Comserv.

At the time of closing in 2005, Long Lines, was wholly owned by Calco, Inc., an Iowa entity, which was wholly owned by Charles A. Long, a U.S. citizen. The Glen Reimers Trust, an Iowa trust, held a 70.27% interest in Schaller. Joann Reimers was the trustee, and Steven Reimers and Memory Reimers were the beneficiaries, all U.S. citizens. Steven Reimers also held a direct 23.65% interest in ANC. According to the Applicant no other individual or entity held a 10% or greater interest in ANC at the time of the transaction.

Schaller is currently owned by the Steven S. Reimers Family Trust (Reimers Family Trust) (60%), an Iowa trust, and Melissa Kestel (40%), a U.S. citizen. Joann Reimers is the trustee of Reimers Family Trust, and Melissa Kestel is the beneficiary. Long Lines, a Delaware entity, is now a wholly owned subsidiary of IH Orbitel, Inc, which in turn is wholly owned by Schurz Communications, Inc. (SCI), both Indiana entities. The Schurz Communications, Inc. Voting Trust (Voting Trust), an Indiana trust, holds a 75.17% interest in SCI. The trustees of the Voting Trust are Todd F. Schurz, Scott C. Schurz, and Franklin Schurz, all U.S. citizens. The beneficiaries of the Voting Trust with a 10% or greater interest are Franklin D. Schurz, Jr. (28%), Kathryn F. Schurz (19%), Mary Ann Schurz (19%), and Laura E. Ray (15%), all U.S. citizens. According to the Applicants, no other individual or entity holds a 10% or greater interest in ANC.

The Applicants filed a request for Special Temporary Authority (STA) related to this application (ITC-STA-20230425-00051), which was granted on May 10, 2023. See also ITC-STA-20220411-00050.

Grant of this application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

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

ITC-T/C-20221118-00136 E Advanced Network Communications, LLC

Transfer of Control

Grant of Authority Date of Action: 06/02/2023

Current Licensee: Advanced Network Communications, LLC

FROM: Long Lines, LLC

TO: Schurz Communications, Inc.

Advanced Network Communications, LLC (ANC), an Iowa limited liability company that holds an international section 214 authorization (ITC-214-2022-325-00043), filed an application for the transfer of control of ANC from Long Lines, LLC (Long Lines) to Schurz Communications, Inc. (SCI). On May 18, 2023, the Applicants filed a supplement.

ANC is jointly owned by Long Lines and Schaller Telephone Company (Schaller), each a holding 50% ownership interest. At the time of the transaction, Long Lines was a wholly owned subsidiary of Long Lines Communications, LLC (Long Lines Communications), both Delaware entities. On March 9, 2015, without prior Commission consent, SCI acquired ownership of Long Lines from Long Lines Communications. The transaction did not affect the Schaller ownership of ANC.

At the time of closing in 2015, Todd F. Schurz held a 24.8% equity interest in SCI, and Robin S. Bruni held a 10.3% equity interest, both U.S citizens. The Schurz Communications Inc. Voting Trust (Voting Trust), an Indiana trust, held a 75.2% voting interest in SCI. The trustees were Todd F. Schurz, Scott Schurz, Sr., and Franklin Schurz, all U.S. citizens. According to the Applicants, no other entity or individual held a 10% or greater in SCI.

Long Lines is now a wholly owned subsidiary of IH Orbitel, Inc, which in turn is wholly owned by Schurz Communications, Inc. (SCI), both Indiana entities. The Schurz Communications, Inc. Voting Trust (Voting Trust), an Indiana trust, holds a 75.17% interest in SCI. The trustees of the Voting Trust are Todd F. Schurz, Scott C. Schurz, and Franklin Schurz, all U.S. citizens. The beneficiaries of the Voting Trust with a 10% or greater interest are Franklin D. Schurz, Jr. (28%), Kathryn F. Schurz (19%), Mary Ann Schurz (19%), and Laura E. Ray (15%), all U.S. citizens. According to the Applicants, no other individual or entity holds a 10% or greater interest in ANC.

The Applicants filed a request for Special Temporary Authority (STA) related to this application (ITC-STA-20230425-00051), which was granted on May 10, 2023. See also ITC-STA-20220411-00050.

Grant of this application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

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

ITC-T/C-20230509-00059 E Long Lines, LLC

Transfer of Control

Grant of Authority Date of Action: 06/06/2023

Current Licensee: Long Lines, LLC

FROM: Schurz Communications, Inc.

TO: IH Orbitel, Inc.

On May 9, 2023, Long Lines, LLC (Long Lines), a Delaware limited liability company that holds and international section 214 authorization (ITC-214-20060724-00362), filed a notification of the pro forma transfer of control of Long Lines from Schurz Communications, Inc. (SCI) to IH Orbitel, Inc. (IH Orbitel), effective December 31, 2017. On May 18, 2023, the Applicants filed supplemental information.

Prior to the transaction Long Lines was a direct wholly owned subsidiary of SCI, an Indiana entity. On December 31, 2017, in a corporate reorganization, SCI transferred its ownership of Long Lines to IH Orbitel, a wholly owned subsidiary of SCI. As a result, Long Lines became a direct wholly owned subsidiary of IH Orbitel, an Indiana entity, and an indirect wholly owned subsidiary of SCI.

Grant of this pro forma notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

ITC-T/C-20230516-00062 E Advanced Network Communications, LLC

Transfer of Control

Grant of Authority Date of Action: 06/06/2023

Current Licensee: Advanced Network Communications, LLC

FROM: Schurz Communications, Inc.

TO: IH Orbitel, Inc.

On May 16, 2023, Advanced Network Communications, LLC (ANC), an Iowa limited liability company that holds an international section 214 authorization (ITC-214-20220325-00043), filed a notification of the pro forma transfer of control of ANC from Schurz Communications, Inc. (SCI) to IH Orbitel, Inc. (IH Orbitel), effective December 31, 2017. ANC is jointly owned by Long Lines, LLC (Long Lines), a wholly owned subsidiary of SCI, and Schaller Telephone Company (Schaller), each a holding 50% ownership interest. The transaction did not affect the Schaller ownership of ANC.

Prior to the transaction, Long Lines was a direct wholly owned subsidiary of SCI, an Indiana entity. On December 31, 2017, in a corporate reorganization, SCI transferred its ownership of Long Lines to IH Orbitel, a wholly owned subsidiary of SCI. As a result, Long Lines became a direct wholly owned subsidiary of IH Orbitel, an Indiana entity, and an indirect wholly owned subsidiary of SCI. Consequently, ANC became an indirect subsidiary of IH Orbitel.

Grant of this pro forma notification is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

SURRENDER

ITC-214-20070626-00246 T-Mobile Puerto Rico LLC

By letter filed on May 25, 2023, T-Mobile Puerto Rico LLC notified the Commission that it surrendered its international section 214 authorization effective May 25, 2023.

ITC-MOD-20110406-00083 eKit.com, Inc.

By letter filed on May 30, 2023, eKit.com, Inc. notified the Commission that it surrendered its international section 214 authorization (ITC-214-20060810-00384) effective May 30, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

Federal Communications Commission
Washington, DC 20554

June 7, 2023

DA 23-485

SMALL ENTITY COMPLIANCE GUIDE

Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage

FCC 23-31
WC Docket No. 18-155
Adopted April 20, 2023

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

In the *Access Arbitrage Second Report and Order* in WC Docket No. 18-155, the Commission acted to reduce financial incentives for arbitrage activities that harm consumers, undermine broadband deployment, and distorts competition amongst carriers and access providers.[1]

Access Stimulation is a form of arbitrage that occurs when a Local Exchange Carrier (LEC) partners with high-volume calling service providers, such as "free" conference calling providers or chat line services, to inflate the number of calls directed to those services as a means of increasing both the LEC's access charge revenue and that of the Intermediate Access Providers they use to deliver calls to their networks. LECs and high-volume calling service providers engage in Access Stimulation to take advantage of intercarrier compensation rates originally designed to ensure people living in rural areas have access to affordable telephone service.

The *Access Arbitrage Second Report and Order* expands the Commission's Access Stimulation Rules to prohibit Intermediate Access Providers from charging interexchange carriers (IXCs) tariffed terminating tandem switching and transport access charges for traffic bound for Internet Protocol Enabled Service (IPES) Providers engaged in Access Stimulation as defined in the Commission's rules. The Commission also expanded the definition of Access Stimulation to include IPES Providers to prevent carriers from evading the current rules by adding an IPES Provider into the call path. In addition, the Commission provides further clarification by either defining or updating the definitions of Intermediate Access Providers, IPES providers and end office equivalent, as well as provide additional guidelines regarding appropriate filing and assessment of charges.

Small businesses providing the types of services discussed in the *Access Arbitrage Second Report and Order* will benefit from the clarity the adopted rules provide. This is particularly the case for IPES providers at risk of violating the adopted rules, as they are typically smaller businesses. Additionally, the Commission believes the rule revisions will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public Switched Telephone Network (PSTN) for the purpose of collecting inflated, tariffed terminating tandem switching and transport access charges from IXCs. The rules and revisions contained in the *Access Arbitrage Second Report and Order* strike an appropriate balance between addressing harmful Access Stimulation conduct on the part of certain entities and avoiding negative effects on providers that are not engaged in such activity.

II. COMPLIANCE REQUIREMENTS

In the *Access Arbitrage Second Report and Order*, the Commission adopted rule revisions to deter arbitrage of the access charge system by closing loopholes exploited by providers manipulating call traffic or call flows as a means of inflating the amount of access charges the LECs can bill IXCs, a practice which can ultimately lead to increased costs for the IXCs' end-user customers. In particular, modifications and changes to the Commission's rules were made to parts 51, 61 and 69 of Title 47 of the Code of Federal Regulations. The information below provides a summary of the compliance requirements set forth in the adopted rules.

A. Additional Provisions Applicable to Access Stimulation Traffic [47 CFR § 51.914]

The Commission adopted additional reforms by clarifying actions parties engaged in Access Stimulation must take regarding billing, notification and their financial responsibilities for service charges. This is achieved through amendments to section 51.914, by revising paragraphs (a) and (b), redesignating paragraphs (c), (d), and (e) as paragraphs (e), (f), and (g), with revisions, and adding paragraphs (c) and (d).

[1] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Second Report and Order, FCC 23-31 (rel. Apr. 21, 2023) (*Access Arbitrage Second Report and Order* or *Order*).

A LEC engaged in Access Stimulation as defined in 47 CFR § 61.3(bbb), shall, within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later:

- not bill any IXC for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport charges for any traffic between such LEC's terminating end office or equivalent and the associated access tandem switch; and ***[47 CFR § 51.914(a)(1)]***
- designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching or terminating switched access tandem transport services to the LEC engaged in Access Stimulation; and ***[47 CFR § 51.914(a)(2)]***
- assume financial responsibility for any applicable Intermediate Access Provider's charges for terminating switched access tandem switching or terminating switched access tandem transport services for any traffic between such LEC's terminating end office or equivalent and the associated access tandem switch. ***[47 CFR § 51.914(a)(3)]***

A LEC engaged in Access Stimulation as defined in 47 CFR § 61.3(bbb), shall, within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and IXCs with which it does business of the following:

- that it is a LEC engaged in Access Stimulation; and ***[47 CFR § 51.914(b)(1)]***
- that it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services to the LEC engaged in Access Stimulation; and ***[47 CFR § 51.914(b)(2)]***
- that it will pay for those services as of that date. ***[47 CFR § 51.914(b)(3)]***

An IPES Provider, as defined in § 61.3(eee), engaged in Access Stimulation, as defined in § 61.3(bbb), then within 45 days of commencing Access Stimulation, or within 45 days of July 3, 2023, whichever is later: ***[47 CFR § 51.914(c)]***

- shall designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching and terminating switched access tandem transport services to the IPES Provider engaged in Access Stimulation; and further ***[47 CFR § 51.914(c)(1)]***
- may assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such IPES Provider's terminating end office or equivalent and the associated access tandem switch; and ***[47 CFR § 51.914(c)(2)]***
- the Intermediate Access Provider shall not assess any charges for such services to the IXC. ***[47 CFR § 51.914(c)(3)]***

If an Intermediate Access Provider receives notice that it has been designated to provide terminating switched access tandem switching or terminating switched access tandem transport services to a LEC or IPES Provider engaged in Access Stimulation, directly, or indirectly through a LEC, and the LEC engaged in Access Stimulation, then that LEC must pay, or the IPES Provider engaged in Access Stimulation may pay, for the terminating access service from the Intermediate Access Provider. The Intermediate Access Provider is prohibited from billing the IXC for interstate or intrastate terminating switched access tandem switching or for terminating switched access tandem transport service for traffic bound for the LEC or IPES Provider but, instead, must bill the LEC or may bill the IPES Provider for those services. ***[47 CFR § 51.914(e)]***

Any LEC that is not itself engaged in Access Stimulation, but serves as an Intermediate Access Provider with respect to traffic bound for a LEC or an IPES Provider engaged in Access Stimulation, will not itself be deemed a LEC engaged in Access Stimulation. ***[47 CFR § 51.914(f)]***

B. Definition of Access Stimulation [47 CFR § 61.3(bbb)]

In order to address the loopholes that emerged through the adoption of new practices by access stimulators circumventing the Commission's existing rules, the *Access Arbitrage Second Report and Order* expanded the definition of what constituted Access Stimulation and also accounted for the practice of inserting IPES Providers into the call flow. Additionally, the Commission clarified the definitions of Intermediate Access Provider, IPES Provider and End Office Equivalent, which is further discussed in sections C, D and E below.

Access Stimulation is defined as occurring when:

- A competitive LEC, rate-of-return LEC, or IPES Provider serving end users has a revenue-sharing agreement based on access charge revenues that results in a net payment to another party and also has either: (i) at least a 3:1 interstate terminating-to-originating traffic ratio in an end office or equivalent in a calendar month or; (ii) 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year for such end office or equivalent. ***[47 CFR § 61.3(bbb)(1)(i)]***

- A competitive LEC or IPES Provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office or equivalent in a calendar month. No revenue-sharing agreement is required under this test. ***[47 CFR § 61.3(bbb)(1)(ii)]***

- A rate-of-return LEC has an interstate terminating-to-originating traffic ratio of at least 10:1 in an end office or equivalent in a three-calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in the same end office in the same three-calendar month period. These factors will be measured as an average over the three-calendar month period. ***[47 CFR § 61.3(bbb)(1)(iii)]***

An access-stimulating competitive LEC serving end users or an access-stimulating IPES Provider serving end users will continue to be deemed as engaged in Access Stimulation until it terminates all revenue-sharing agreements and does not exceed the 3:1 traffic ratio trigger or the minutes of use growth trigger or it no longer exceeds the 6:1 ratio test for six consecutive months and does not meet any other Access Stimulation definition. ***[47 CFR § 61.3(bbb)(2)]***

A rate-of-return LEC serving end users that has engaged in Access Stimulation will continue to be deemed as engaged in Access Stimulation until it terminates all revenue-sharing agreements and does not otherwise engage in Access Stimulation or its interstate terminating-to-originating traffic ratio falls below 10:1 for six consecutive months and its monthly interstate terminating minutes-of-use in an end office or equivalent falls below 500,000 for six consecutive months, and it does not otherwise engage in Access Stimulation. ***[47 CFR § 61.3(bbb)(3)]***

Each competitive LEC, rate-of-return LEC or IPES Provider must calculate its interstate terminating-to-originating traffic ratio for an end office or equivalent. ***[47 CFR § 61.3(bbb)(5)]***

C. Definition of Intermediate Access Provider [47 CFR §§ 51.914; 61.3(ccc); 69.4(l); 69.5(b)]

An Intermediate Access Provider is any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final IXC in a call path and:

- A LEC engaged in Access Stimulation; or ***[47 CFR § 61.3(ccc)(1)]***
- A LEC delivering traffic to an IPES Provider engaged in Access Stimulation; or ***[47 CFR § 61.3(ccc)(2)]***
- An IPES Provider engaged in Access Stimulation where the entity delivers calls directly to the IPES Provider. ***[47 CFR § 61.3(ccc)(3)]***

D. Definition of IPES Provider [47 CFR §§ 51.914, 61.3(eee), 69.4(l) and 69.5(b)]

An IPES Provider is a provider offering a service that: (1) enables communications; (2) requires a broadband connection from the user's location or end to end; (3) requires Internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls that originate on the PSTN or that originate from an Internet Protocol service.

E. Definition of End Office Equivalent [47 CFR §§ 51.914, 61.3(fff), 69.3(e)(12)(iv) and 69.4(l)]

An End Office Equivalent is the geographic location where traffic is delivered to an IPES Provider for delivery to an end user. This location shall be used as the terminating location for purposes of calculating terminating-to-originating traffic ratios, as provided in section 61.3.

F. Charges to be Filed [47 CFR § 69.4(l)]

In order to ensure the requirement to not bill certain carriers is mandatory, the Commission amended section 69.4(l) of its rules. As a result, a competitive LEC or a rate-of-return LEC engaged in Access Stimulation, the Intermediate Access Provider it subtends, or an Intermediate Access Provider that delivers traffic directly or indirectly to an IPES Provider engaged in Access Stimulation are prohibited from billing an IXC for interstate or intrastate terminating tandem switched access or terminating switched access transport charges for any traffic between such competitive LEC's, rate-of-return LEC's, or IPES Provider's end office or equivalent and the associated access tandem switch.

G. Persons to be Assessed [47 CFR § 69.5(b)]

The *Access Arbitrage Second Report and Order* also clarifies that it is "IXCs" and not "LECs" that are not being charged access charges under the Commission's Access Stimulation Rules. The revised sections set forth that a carrier's carrier charges shall be computed and assessed upon all IXCs that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that:

- Competitive LECs or rate-of-return LECs engaged in Access Stimulation are prohibited from billing IXCs for terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges when the terminating traffic is destined for a competitive LEC, rate-of-return LEC, or is destined, directly or indirectly, for an IPES Provider engaged in Access Stimulation. ***[47 CFR § 69.5(b)(1)]***
- Intermediate Access Providers are prohibited from billing IXCs for terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges when the terminating traffic is destined for competitive LECs or rate-of-return LECs engaged in Access Stimulation, or is destined, directly or indirectly, for an IPES Provider engaged in Access Stimulation. ***[47 CFR § 69.5(b)(2)]***

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Access Arbitrage Second Report and Order* imposes the following new notice requirements on LECs and IPES Providers engaged in Access Stimulation. The effective date of the following requirements is delayed until the Commission receives approval from the Office of Management and Budget (OMB) to collect this information. The Commission will release a Public Notice announcing the effective dates and compliance dates for the following requirements:

- If an IPES Provider is engaged in Access Stimulation, it must, within 45 days after the effective date of this paragraph (51.914(d)) – which is 30 days after the Commission publishes the notification of OMB approval in the *Federal Register* , or, with respect to those entities that later engage in Access Stimulation, within 45 days from the date such entities commence Access Stimulation, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business:
    a. That it is an IPES Provider engaged in Access Stimulation; and[2]
    b. That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services directly, or indirectly through a local exchange carrier, to the IPES Provider engaged in Access Stimulation; and[3]
    c. Whether the IPES Provider will pay for those services as of that date.[4]

LECs or IPES Providers may need to modify their internal record-keeping practices to provide the requisite notification.

- Any LEC or IPES Provider that is no longer engaged in Access Stimulation must file notice with affected IXCs and Intermediate Access Providers, as well as with the Commission, notifying them of the end of its access-stimulating status.[5]

IV. IMPLEMENTATION DATE

The *Access Arbitrage Second Report and Order* and its requirements for LECs and IPES Providers engaged in Access Stimulation became effective on July 3, 2023, except for the notice requirements adopted in 47 CFR §§ 51.914(d) and 51.914(g) which require approval by OMB under the Paperwork Reduction Act.[6]

V. INTERNET LINKS

A copy of the *Access Arbitrage Second Report and Order* is available at:

https://docs.fcc.gov/public/attachments/FCC-23-31A1.pdf.

A copy of the Federal Register Summary of the *Access Arbitrage Second Report and Order* is available at:

https://www.govinfo.gov/content/pkg/FR-2023-06-01/pdf/2023-10661.pdf.

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[2] 47 CFR § 51.914(d)(1).

[3] *Id.* at § 51.914(d)(2).

[4] *Id.* at § 51.914(d)(3).

[5] *Id.* at § 51.914(g).

[6] 47 CFR § 51.914(d); (g).

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 23-487
Released: June 8, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 22-358

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 Vested Networks, LLC Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 22-358 (Oct. 11, 2022), Public Notice, DA 23-375 (WCB May 8, 2023).

Effective Grant Date: June 8, 2023

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

-FCC-

[1] *See* 47 CFR § 52.15(g)(3).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-488
Released: June 8, 2023

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROPOSED CHANGES TO THE 2024 FCC FORM 499-A, FCC FORM 499-Q, AND ACCOMPANYING INSTRUCTIONS

WC Docket No. 06-122

Comment Date: July 10, 2023

The Wireline Competition Bureau (Bureau) seeks comment on proposed revisions to the (1) 2024 annual Telecommunications Reporting Worksheet, FCC Form 499-A (Form 499-A) and accompanying instructions (Form 499-A Instructions) to report 2023 revenues,[1] and (2) 2024 quarterly Telecommunications Reporting Worksheet, FCC Form 499-Q (Form 499-Q) and accompanying instructions (Form 499-Q Instructions) to report projected 2024 collected revenues on a quarterly basis.[2]

The Bureau has delegated authority to revise these FCC forms and accompanying instructions to, among other things, ensure "sound and efficient administration of the universal service programs,"[3] and to promote clarity, transparency and predictability.

[1] The Communications Act of 1934 (Act), as amended, requires that the Commission establish mechanisms to fund universal service, interstate telecommunications relay services, the administration of the North American Numbering Plan, and the shared costs of local number portability administration. 47 U.S.C. §§ 151, 225, 251, 254. To accomplish these congressionally-directed objectives, the Commission requires telecommunications carriers and certain other providers of telecommunications (including Voice-over-Internet-Protocol (VoIP) service providers) to report each year on the Form 499-A the revenues they receive from offering service. *See* 47 CFR §§ 52.17(b), 52.32(b), 54.706, 54.708, 54.711, 64.604(b)(5)(iii)(B). The Form 499-A is due on April 1 of each year. *See* Universal Service Administrative Company Schedule of Filings http://usac.org/cont/about/when-to-file.aspx.

[2] Sections 54.706, 54.711, and 54.713 of the Commission's rules require all telecommunications carriers providing interstate telecommunications services, interconnected VoIP providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to the universal service fund and file a Form 499-Q on February 1, May 1, August 1, and November 1 of each year. 47 CFR §§ 54.706, 54.711, 54.713.

[3] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18442, para. 81 (1997) ("Because it is difficult to determine in advance precisely the information that will be needed to administer the new universal service programs, the [Common Carrier, now Wireline Competition] Bureau will have delegated authority to waive, reduce, or eliminate contributor reporting requirements that may prove unnecessary. The Bureau also will have delegated authority to require any additional contributor reporting requirements necessary to the sound and efficient administration of the universal service programs."). *See* 47 CFR § 54.711(c). Consistent with this authority, the Bureau annually revises the Telecommunications Reporting Worksheet Instructions to provide direction and guidance for complying with existing rules and requirements. The Form 499s and accompanying instructions are typically modified each year based on experience in administering the universal service program and explicit rulings by the Commission or the Bureau during the preceding reporting

(continued….)

Redlined versions of the forms and instructions showing proposed changes from the forms and instructions currently in effect are attached to this Public Notice. The proposed revisions to the 2024 Forms 499-A and 499-Q and the accompanying instructions, as applicable, are summarized below:

Changes to the 2024 FCC Form 499-A Instructions:

- **Clarifications:**
  - Table 2 on page 13 is updated to clarify that carriers that hold international section 214 authorizations must designate a Washington, D.C.-based agent for service of process who is a U.S. citizen or lawful permanent resident.
  - Page 17 is updated to add the reference to the Broadband Data Collection (BDC) system and indicate that entities required to submit information to the BDC system should use the same single name that is used in the FCC Form 477 and/or the BDC broadband deployment submissions.
  - Page 19 is updated to clarify that carriers that hold international section 214 authorizations must designate a Washington, D.C.-based agent for service of process who is a U.S. citizen or lawful permanent resident.
  - Page 28 is updated to clarify that line 305.2 should not include revenue from interconnected VoIP service provided by the Filer and resold as interconnected VoIP service by reseller customers of the Filer. However, revenue from private line/business data service provided by the Filer and resold as interconnected VoIP service by reseller customers of the Filer should be included.
  - Page 33 is updated to clarify that Line 311 should include long distance using interconnected VoIP provided to contributing resellers.
  - Page 49 is updated to provide examples of exemptions from paying certain regulatory fees.
  - Page 50 is updated to clarify that line 514(a) should be used for contributions funding IP Relay and Video Relay Service (VRS) in addition to IP Captioned Telephone Service (CTS).

Changes to the 2024 Form 499-Q Instructions:

- **Circularity Factor Update:** Page 5 is updated to note that the circularity factor will be adjusted and updated in the Form 499-Q instructions based upon the quarterly contribution factors subsequent to the Fourth Quarter 2023 contribution factor announcement.[4]
- Page 10 is updated to add the reference to the BDC system and indicate that entities required to submit information to the BDC system should use the same single name that is used in the FCC Form 477 and/or the BDC broadband deployment submissions.

Changes to both the 2024 Form 499-A and Form 499-Q, where applicable, and instructions:

- **Date Changes:** Dates are updated throughout the Form 499s and instructions. References to "2023" are changed to "2024" and references to "2022" are changed to "2023."

(Continued from previous page)
period. *See, e.g.*, *Universal Service Contribution Methodology et al.,* WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7533-50, paras. 24-62 (2006).

[4] *See Federal-State Joint Board on Universal Service, et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971, para. 35 (2002).

- **Clarifications and Stylistic Changes:** In a number of instances, additional non-substantive clarifications and minor stylistic changes, such as typos and spacing, are also made.

****

Interested parties may file comments **on or before July 10, 2023.**

All pleadings are to reference **WC Docket No. 06-122**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[5]

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier or by first-class or overnight U.S. 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 DC 20554.

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

In addition, we request that one copy of each pleading be sent to each of the following:

(1) Matthew Baker, Telecommunications Access Policy Division, Wireline Competition Bureau, 45 L Street, NE, Washington, DC 20554; e-mail: matthew.baker@fcc.gov; and

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 45 L Street, NE, Washington, DC 20554; e-mail: charles.tyler@fcc.gov.

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

[5] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1999).

[6] In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

[7] 47 CFR §§ 1.1200 *et seq.*

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

For further information, please contact Matthew Baker, Telecommunications Access Policy Division, Wireline Competition Bureau, at matthew.baker@fcc.gov or (202) 418-0556.

Attachments:
Attachment A: 2024 Form 499-A (Redline Copy)
Attachment B: 2024 Form 499-A Instructions (Redline Copy)
Attachment C: 2024 Form 499-Q (Redline Copy)
Attachment D: 2024 Form 499-Q Instructions (Redline Copy)

- FCC -

2024~~3~~ FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2023~~2~~ Revenues)

APPROVED BY OMB

3060-0855

>>> Please read instructions before completing.<<<

Annual Filing -- due April 1, 2024~~3~~

Block 1: Contributor Identification Information

During the year, filers must refile Blocks 1, 2 and 6 if there are any changes in Lines 104 or 112. See Instructions.

101	Filer 499 ID [If you don't know your number, contact the administrator at (888) 641-8722. If you are a new filer, write "NEW" in this block and a Filer 499 ID will be assigned to you.]	
102	Legal name of filer	
103	IRS employer identification number	[Enter 9 digit number]
104	Name filer is doing business as	

105 Telecommunications activities of filer [Select up to 5 boxes that best describe the reporting entity. Enter numbers starting with "1" to show the order of importance -- see instructions.]

☐ Audio Bridging (teleconferencing) Provider		☐ CAP/CLEC	☐ Cellular/PCS/SMR (wireless telephony inc. by resale)	
☐ Coaxial Cable	☐ Incumbent LEC	☐ Interconnected VoIP	☐ Interexchange Carrier (IXC)	☐ Local Reseller
☐ Non-Interconnected VoIP	☐ Operator Service Provider	☐ Paging	☐ Payphone Service Provider	☐ Prepaid Card
☐ Private Service Provider	☐ Satellite Service Provider	☐ Shared-Tenant Service Provider / Building LEC		☐ SMR (dispatch)
☐ Toll Reseller	☐ Wireless Data	☐ Other Local	☐ Other Mobile	☐ Other Toll

If Other Local, Other Mobile or Other Toll is checked describe carrier type / services provided:

106.1	Affiliated Filers Name/Holding Company Name (All affiliated companies must show the same name on this line.)	Check if filer has no affiliates ☐
106.2	Affiliated Filers Name/Holding Company Name IRS employer identification number	[Enter 9 digit number]
107	FCC Registration Number (FRN) [https://apps.fcc.gov/cores/userLogin.do] [For assistance, contact the CORES help desk at 877-480-3201 or CORES@fcc.gov]	[Enter 10 digit number]
108	Management company [if filer is managed by another entity]	
109	Complete mailing address of reporting entity corporate headquarters	Street1 Street2 Street3 City State Zip (postal code) Country
110	Complete business address for customer inquiries and complaints check if same address as Line 109 ☐	Street1 Street2 Street3 City State Zip (postal code) Country
111	Telephone number for customer complaints and inquiries [Toll-free number if available]	( ) - ext -

112 List all trade names used in the past 3 years in providing telecommunications. Include all names by which you are known by customers.

a		g	
b		h	
c		i	
d		j	
e		k	
f		l	

Use additional sheets if necessary. Each filer must provide all names used for telecommunications activities

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

20243 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 20233 Revenues)

Block 2-A: Regulatory Contact Information		
201	Filer 499 ID [from Line 101]	
202	Legal name of filer [from Line 102]	
203	Person who completed this Worksheet	First MI Last
204	Telephone number of this person	( ) - ext -
205	Fax number of this person	( ) -
206	Email of this person ‖not for public release‖	
207	Contact person name, office name, and mailing address of a corporate office to which correspondence regarding this Telecommunications Reporting Worksheet should be sent. check if same name as Line 203 ☐ check if same address as Line 109 ☐	Office Attn: First name MI Last Email ‖not for public release‖ Phone ( ) - ext- Fax ( ) - Street1 Street2 Street3 City State Zip (postal code) Country
208	Billing address and billing contact person [Plan administrators will send bills for contributions to this address. Please attach a written request for alternative billing arrangements.] check if name and address same as Line 207 ☐	Company Attn: First name MI Last Email ‖not for public release‖ Phone ( ) - ext- Fax ( ) - Street1 Street2 Street3 City State Zip (postal code) Country
208.1	Email address pertaining to ITSP regulatory fee issues	‖not for public release‖
Block 2-B: Agent for Service of Process		All carriers and providers of interconnected and non-interconnected VoIP must complete Lines 209 through 213. During the year, these filers must refile Blocks 1, 2, and 6 if there are any changes in this section. See Instructions
209	D.C. Agent for Service of Process	Company Attn: First name MI Last
210	Telephone number of D.C. agent	( ) - ext -
211	Fax number of D.C. agent	( ) -
212	Email of D.C. agent	
213	Complete business address of D.C. agent for hand service of documents	Street1 Street2 Street3 City State DC Zip
214	Local/alternate Agent for Service of Process (optional)	Company Attn: First name MI Last
215	Telephone number of local/alternate agent	( ) - ext -
216	Fax number of local/alternate agent	( ) -
217	Email of local/alternate agent	
218	Complete business address of local/alternate agent for hand service of documents	Street1 Street2 City State Zip (postal code) Country

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

2024~~3~~ FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2023~~2~~ Revenues)

Block 2-C: FCC Registration and Contact Information		Filers must refile Blocks 1, 2 and 6 if there are any changes in this section. See Instructions.
219	Filer 499 ID [from Line 101]	
220	Legal name of filer [from Line 102]	
221	Chief Executive Officer (or, highest ranking company officer if the filer does not have a chief executive officer)	First MI Last
222	Business address of individual named on Line 221 check if same as Line 109 ☐	Street1 Street2 Street3 City State Zip (postal code) Country
223	Second ranking company officer, such as Chairman (Must be someone other than the individual listed on Line 221)	First MI Last
224	Business address of individual named on Line 223 check if same as Line 109 ☐	Street1 Street2 Street3 City State Zip (postal code) Country
225	Third ranking company officer, such as President or Secretary (Must be someone other than individuals listed on Lines 221 and 223)	First MI Last
226	Business address of individual named on Line 225 check if same as Line 109 ☐	Street1 Street2 Street3 City State Zip (postal code) Country

227 Indicate jurisdictions in which the filer provides service. Include jurisdictions in which service was provided in the past 15 months and jurisdictions in which service is likely to be provided in the next 12 months.

☐ Alabama	☐ Guam	☐ Massachusetts	☐ New York	☐ Tennessee
☐ Alaska	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ American Samoa	☐ Idaho	☐ Midway Atoll	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Minnesota	☐ Northern Mariana Islands	☐ U.S. Virgin Islands
☐ Arkansas	☐ Indiana	☐ Mississippi	☐ Ohio	☐ Vermont
☐ California	☐ Iowa	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ Colorado	☐ Johnston Atoll	☐ Montana	☐ Oregon	☐ Wake Island
☐ Connecticut	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ Washington
☐ Delaware	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ West Virginia
☐ District of Columbia	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wisconsin
☐ Florida	☐ Maine	☐ New Jersey	☐ South Carolina	☐ Wyoming
☐ Georgia	☐ Maryland	☐ New Mexico	☐ South Dakota	

228	Year and month filer first provided (or expects to provide) telecommunications in the U.S.	☐ Check if prior to 1/1/1999, otherwise:	Year	Month

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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2024~~3~~ FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2023~~2~~ Revenues)

Block 3: Carrier's Carrier Revenue Information

301	Filer 499 ID [from Line 101]					
302	Legal name of filer [from Line 102]					
Report billed revenues for January 1 through December 31, 2023~~2~~. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate and international.		Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates Interstate (b)	 International (c)	Breakouts Interstate Revenues (d)	 International Revenues (e)
Revenues from Services Provided for Resale as Telecommunications by Other Contributors to Federal Universal Service Support Mechanisms						
Fixed local service						
	Monthly service, local calling, connection charges, vertical features, and other local exchange service including subscriber line and					
303.1	PICC charges to IXCs Provided as unbundled network elements (UNEs)					
303.2	Provided under other arrangements					
	Per-minute charges for originating or terminating calls					
304.1	Provided under state or federal access tariff					
304.2	Provided as unbundled network elements or other contract arrangement					
	Local private line & business data service					
305.1	Provided to other contributors for resale as telecommunications					
305.2	Provided to other contributors for resale as interconnected VoIP					
306	Payphone compensation from toll carriers					
307	Other local telecommunications service revenues					
308	Support revenues received from Federal or state sources					
Mobile services (i.e., wireless telephony, paging, and other mobile services)						
309	Monthly, activation, and message charges except toll					
Toll services						
310	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.)					
311	Ordinary long distance(direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)					
312	Long distance private line services					
313	Satellite services					
314	All other long distance services					
315	Total revenues from resale [Lines 303 through 314]					

See section III.C.2 of the instructions for the requirements applicable to revenue reported on this page. These records must be made available to the administrator or the FCC upon request.

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2024~~3~~ FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2023~~2~~ Revenues)

Block 4-A: End-User and Non-Telecommunications Revenue Information

401	Filer 499 ID [from Line 101]					
402	Legal name of filer [from Line 102]					
	Report billed revenues for January 1 through December 31, 2023~~2~~. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate and international.	Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates Interstate (b)	 International (c)	Breakouts Interstate Revenues (d)	 International Revenues (e)
	Revenues from All Other Sources (end-user, telecom. & non-telecom.)					
403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions					
	Fixed local services					
	Monthly service, local calling, connection charges, vertical features, and other local exchange service charges except for federally tariffed subscriber line charges and PICC charges					
	Traditional Circuit Switched					
404.1	Provided at a flat rate including interstate toll service – local portion					
404.2	Provided at a flat rate including interstate toll service – toll portion					
404.3	Provided without interstate toll included (see instructions)					
	Interconnected VoIP					
404.4	Offered in conjunction with a broadband connection					
404.5	Offered independent of a broadband connection					
405	Tariffed subscriber line charges, Access Recovery Charges, and PICC charges levied by a local exchange carrier on a no-PIC customer					
406	Local private line & business data service [Includes the transmission portion of wireline broadband Internet access provided on a common carrier basis.]					
407	Payphone coin revenues (local and long distance)					
408	Other local telecommunications service revenues					
	Mobile services (i.e., wireless telephony, paging, and other mobile services)					
409	Monthly and activation charges					
410	Roaming and air-time charges for toll calls, but excluding separately stated toll charges					

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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Block 4-A: Continued

		Total Revenues (a)	If breakouts are not book amounts, enter whole percentage estimates: Interstate (b)	If breakouts are not book amounts, enter whole percentage estimates: International (c)	Breakouts: Interstate Revenues (d)	Breakouts: International Revenues (e)
Toll services						
411	Prepaid calling card (including card sales to customers) and non-carrier distributors) reported at face value of cards					
412	International calls that both originate and terminate in foreign points		0%	100%		
413	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.) other than revenues reported on Line 412					
	Ordinary long distance (direct-dialed MTS, customer toll-free (800/888 etc.) service, "10-10" calls, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)					
414.1	All, other than interconnected VoIP, including, but not limited to, itemized toll on wireline and wireless bills					
414.2	All interconnected VoIP long distance, including, but not limited to, itemized toll					
415	Long distance private line services					
416	Satellite services					
417	All other long distance services					
	Revenues other than U.S. telecommunications revenues, including information services, inside wiring maintenance, billing and collection, customer premises equipment, published directory, dark fiber, Internet access, cable TV program transmission, foreign carrier operations, and non-telecommunications revenues (See instructions)					
418.1	bundled with circuit switched local exchange service					
418.2	bundled with interconnected VoIP local exchange service					
418.3	Other					
418.4	non-interconnected VoIP revenues not included in any other category					
Block 4-B: Total Revenue and Uncollectible Revenue Information						
419	Gross billed revenues from all sources (incl. reseller & non-telecom.) [Lines 303 through 314 plus Lines 403 through 418]					
420	Gross universal service contribution base amounts [Lines 403 through 411 plus Lines 413 through 417] [See Table 3 in instructions.]					
421	Uncollectible revenue/bad debt expense associated with gross billed revenues amounts shown on Line 419 [See instructions.]					
422	Uncollectible revenue/bad debt expense associated with universal service contribution base amounts shown on Line 420					
423	Net universal service contribution base revenues [Line 420 minus line 422]					

Block 5: Additional Revenue Breakouts

501	Filer 499 ID [from Line 101]	
502	Legal name of filer [from Line 102]	

Filers that report revenues in Block 3 and Block 4 must provide the percentages requested in Lines 503 through 510. See instructions for limited exceptions.

			Block 3 Carrier's Carrier (a)	Block 4 End-User Telecom (b)
		Percentage of revenues reported in Block 3 and Block 4 billed in each region of the country. Round or estimate to nearest whole percentage. Enter 0 if no service was provided in the region.		
503	Southeast:	Alabama, Florida, Georgia, Kentucky Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	%	%
504	Western:	Alaska, Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming	%	%
505	West Coast:	California, Hawaii, Nevada, American Samoa, Guam, Johnston Atoll, Midway Atoll, Northern Mariana Islands, and Wake Island	%	%
506	Mid-Atlantic:	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and, West Virginia	%	%
507	Mid-West:	Illinois, Indiana, Michigan, Ohio, and Wisconsin	%	%
508	Northeast:	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont	%	%
509	Southwest:	Arkansas, Kansas, Missouri, Oklahoma, and Texas	%	%
510	Total:	[Percentages must add to 0 or 100.]	%	%

511 Revenues from resellers that do not contribute to universal service support mechanisms are included in Block 4-B, Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded the filer has the option of identifying such revenues below. **As stated in the instructions, you must have in your records the FCC Filer 499 ID for each customer whose revenues are included on Line 511. (See instructions.)**

		(a) Total Revenues	(b) Interstate and International
	Revenues from resellers that do not contribute to Universal Service		
512	Gross TRS contribution base amounts [Lines 403 through 417 plus Line 418.4 less Line 511]		
513	Uncollectible revenue/bad debt expense associated with TRS contribution base amounts shown on Line 512		
514	Net TRS contribution base revenues [Line 512 less Line 513]		

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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Block 6: CERTIFICATION: to be signed by an officer of the filer

601	Filer 499 ID [from Line 101]	
602	Legal name of filer [from Line 102]	

Section IV of the instructions provides information on which types of filers are required to file for which purposes. Any filer claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service Administrator will determine which filers meet the *de minimis* threshold based on information provided in Block 4, even if you fail to so certify below.]

603 I certify that the filer is exempt from contributing to: Universal Service ☐ TRS ☐ NANPA ☐ LNP Administration ☐

Provide explanation below:

_____

_____

_____

_____

604	Please indicate whether the filer is	**State or Local Government Entity** ☐ **I.R.C. § 501 or State Tax Exempt (see instructions)** ☐
605	I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's rules.	☐

I certify that I am an officer of the above-named filer as defined in the instructions, that I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year. In addition, I swear, under penalty of perjury, that all requested identification registration information has been provided and is accurate. If the above-named filer is filing on a consolidated basis, I certify that this filing incorporates all of the revenues for the consolidated entities for the entire year and that the filer adhered to and continues to meet the conditions set forth in section III-B of the instructions.

606	Signature	_____
607	Printed name of officer	First MI Last
608	Position with reporting entity	
609	Business telephone number of officer	( ) - ext -
610	Email of officer ‖not for public release‖	
611	Date	
612	Check those that apply	[redacted]ginal April 1 filing for year [redacted]w filer, registration only [redacted]vised filing with updated registration [redacted]vised filing with updated revenue data

Do not mail checks with this form. **File this form online:** https://forms.universalservice.org/portal/login
For additional information regarding this worksheet contact: (888) 641-8722 or via email: Form499@usac.org

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. § 1001

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FCC Form 499-A, ~~October~~ XXXX 2023~~2~~
Approved by OMB
OMB Control Number 3060-0855
Estimated Average Burden Hours Per Response: 13.5 Hours

2024~~3~~ Telecommunications Reporting Worksheet Instructions
(FCC Form 499-A)

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File the FCC Form 499-A online at https://forms.universalservice.org

I. INTRODUCTION

The Communications Act of 1934, as amended, requires that the Commission establish mechanisms to fund universal service (USF), interstate telecommunications relay services (TRS), the administration of the North American Numbering Plan (NANPA), and the shared costs of local number portability administration (LNPA).[1] To accomplish these congressionally directed objectives, the Commission requires telecommunications carriers and certain other providers of telecommunications (including Voice-over-Internet-Protocol (VoIP) service providers) to report each year on the Telecommunications Reporting Worksheet the revenues they receive from offering service.[2] The administrators of each of these programs use the revenues reported on this Worksheet to calculate and assess any necessary

[1] 47 U.S.C. §§ 151, 225, 251, 254, 616.

[2] *See* 47 CFR §§ 52.17(b), 52.32(b), 54.708, 54.711, 64.604(c)(5)(iii)(A) and (B).

contributions. The Commission also uses the revenue data reported on this Worksheet to calculate and assess Interstate Telecommunications Service Provider (ITSP) regulatory fees.[3]

Although some Telecommunications Reporting Worksheet filers may not need to contribute to each of the support and cost recovery mechanisms, all telecommunications carriers and certain additional telecommunications providers must file. These instructions explain which filers must contribute to particular mechanisms, but filers should consult the specific rules that govern contributions for each of the mechanisms.[4] In general, contributions are calculated based on each filer's end-user telecommunications revenue information, as filed in this Worksheet.

By filing this Worksheet, filers may also satisfy their obligations under section 413 of the Act to designate an agent in the District of Columbia for service of process[5] and their obligations to register with the Federal Communications Commission.[6]

[3] *See* 47 U.S.C. § 159(a), (b)(1)(A), (g) (authorizing the Commission to collect annual regulatory fees to recover the costs of enforcement, policy and rulemaking, user information, and international activities).

[4] *See* 47 CFR §§ 52.17 (numbering administration), 52.32 (local number portability), 54.706 (universal service), 64.604 (TRS).

[5] 47 U.S.C. § 413; *see* 47 CFR § 1.47(h).

[6] 47 CFR § 64.1195.

II. CONTACT INFORMATION

If you have questions about the Worksheet or the instructions, you may contact:

Universal Service Administrator	form499@usac.org (888) 641-8722

If you have questions regarding contribution amounts, billing procedures, or the support and cost recovery mechanisms, you may contact:

Universal Service Administrator:	form499@usac.org (888) 641-8722
TRS Administrator:	trs@rolkaloube.com (717) 585-6605
NANPA Billing and Collection Agent:	nanp@welchllp.com (613) 760-4512
Local Number Portability Administrator:	NPACBilling@iconnectiv.numberportability.com (844) 560-8050
ITSP Regulatory Fees	(877) 480-3201

III. FILING REQUIREMENTS AND GENERAL INSTRUCTIONS

A. WHO MUST FILE

1. GENERAL INFORMATION

With very limited exceptions, all intrastate, interstate, and international providers of telecommunications in the United States[7] must file this Worksheet.[8] In addition to filing this form most filers must contribute to the universal service, TRS, NANPA, and LNPA funding mechanisms. This section provides a short summary to assist carriers and service providers in determining whether they must contribute to one or more of the mechanisms. Filers should consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms.

FCC Form 499-A is a multi-purpose form. It is used for at least seven purposes:

Annual filing requirements:

1. Report revenues for purposes of the federal Universal Service Fund (USF);
2. Report revenues for purposes of the federal Telecommunications Relay Services Fund (TRS);
3. Report revenues for the administration of the North American Numbering Plan (NANPA);
4. Report revenues for the shared costs of local number portability administration (LNPA);
5. Report revenues for calculating and assessing Interstate Telecommunications Service Provider (ITSP) regulatory fees;

One-time filing requirements (with obligation to revise if information changes):

6. Satisfy obligations under section 413 of the Act to designate an agent in the District of Columbia for service of process;
7. Fulfill obligations to register with the Federal Communications Commission under 47 CFR § 64.1195.

If you are subject to one or more of the above requirements, you must file FCC Form 499-A.

1. Federal Universal Service Fund — Entities that provide interstate telecommunications to the public for a fee as well as certain other providers of interstate telecommunications must contribute to the universal service support mechanisms. *See* 47 CFR § 54.706.

[7] For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

[8] Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications *services*" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). For more information on these terms, see: 47 U.S.C. §§ 153(50), (51); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*); *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Contribution Methodology Reform Order*).

2. Telecommunications Relay Services — Every common carrier[9] providing telecommunications services and every VoIP provider (including interconnected and non-interconnected) must contribute to the TRS Fund. *See* 47 CFR §§ 64.601(b), 64.604.

3. Non-Interconnected VoIP Service Providers — All providers of "non-interconnected VoIP service" (as defined in section 64.601(a) of the Commission's rules) with end-user revenues subject to TRS contributions must file this Worksheet in order to register with the Commission and report their revenues for purposes of calculating TRS contributions.[10]

4. North American Numbering Plan Administration — All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration. *See* 47 CFR § 52.17.

5. Shared Costs of Local Number Portability — The shared costs of long-term number portability attributable to a regional database shall be recovered from all telecommunications carriers and interconnected VoIP providers providing service in that region. *See* 47 CFR § 52.32.

6. ITSP Regulatory Fees – Congress requires the Commission to assess and collect regulatory fees "to recover the costs of …enforcement activities, policy and rulemaking activities, user information services, and international activities." *See* 47 CFR § 159(a).

7. Designation of Agent for Service of Process – For more information on this requirement, see the instructions for Block 2-B.

8. FCC Registration – For more information on this requirement, see the instructions for Block 2-C.

2. ADDITIONAL INFORMATION REGARDING USF CONTRIBUTION REQUIREMENTS

Entities that provide interstate telecommunications to the public for a fee as well as certain other providers of interstate telecommunications must contribute to the universal service support mechanisms.

- The term "telecommunications" refers to the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.[11]

- For the purpose of filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging services; dispatch and operator services; mobile radio services;[12] access to interexchange service; business data services; wide area telecommunications

[9] "Common carrier" or "carrier" means "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy. . ." 47 U.S.C. § 153(11).

[10] *See Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14532, 14537, para. 12 (2011) (*2011 TRS Contributions Order*) (adding definition of "non-interconnected VoIP service" to the Commission's TRS rules at section 64.601(a)). *See* 47 C.F.R § 64.601(a).

[11] 47 U.S.C. § 153(50).

[12] *See Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, WC Docket No. 06-122, Order, 23 FCC Rcd 12836 (Wireline Comp. Bur. 2008).

services (WATS); subscriber toll-free and 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; Frame Relay services; asynchronous transfer mode (ATM) services; Multi-Protocol Label Switching (MPLS) services; audio bridging services;[13] and interconnected VoIP services.

- Note that all incumbent (ILEC) and competitive (CLEC) local exchange carriers provide access services and, therefore, provide interstate telecommunications. No filing exemptions exist for data or non-voice services.
- There is no filing exception for entities that offer services to a narrow or limited class of users. Thus filers include:
  - Entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis.
  - Most telecommunications carriers and all interconnected VoIP providers including those that qualify for the *de minimis* exception under the Commission's universal service rules.[14]
  - Owners of pay telephones, also known as "pay telephone aggregators."
- Three types of non-common-carrier telecommunications providers may, under the circumstances set forth below, not be required to contribute to USF directly: (a) *de minimis* telecommunications providers; (b) government, broadcasters, schools, and libraries; and (c) systems integrators and self-providers.

a. Exception for USF *de minimis* telecommunications providers

Telecommunications providers are not required to contribute directly to the universal service support mechanisms for a given year if their contribution for that year is less than $10,000.[15]

- Providers that offer telecommunications for a fee exclusively on a non-common carrier basis need not file this Worksheet if their contribution to the universal service support mechanisms would be *de minimis* under the universal service rules. Note that entities providing solely private line service may nevertheless be considered common carriers if they offer their services directly to the public or to such classes of users as to be effectively available directly to the public.[16]
- Telecommunications carriers providing telecommunications services on a common-carriage basis and interconnected VoIP providers need not contribute directly to the universal service support mechanism if they meet the *de minimis* standard.[17] However, they must file this Worksheet because they must contribute to other support mechanisms (TRS, NANPA or LNPA). *See* section

[13] *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731, 10737–38, para. 22 (2008) (*Intercall Order*), *petition for reconsideration denied*, *Petitions for Reconsideration and Clarification of the InterCall Order*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, 27 FCC Rcd 898 (2012), *subsequent history omitted*.

[14] *See* 47 CFR § 54.708.

[15] *See id*.

[16] *See* 47 U.S.C. § 153(53).

[17] A resale provider may contribute directly to the USF by signing a resale certificate or may be treated as an end user by its underlying carrier and therefore may contribute indirectly as a result of USF pass-through charges. *See, e.g.,* section IV.C.4 "Attributing Revenues from Contributing Resellers and From End Users."

III.A.1 for information regarding contribution requirements for TRS, NANPA, and LNPA. Such providers need not file an FCC Form 499-Q.[18]

Providers who may be *de minimis* should complete the table contained in Appendix A to determine whether they meet the *de minimis* standard.

- Use the table in Appendix A to calculate estimated universal service contributions for the period January 2023~~2~~ through December 2023~~2~~.
    - To complete this table, providers must first complete Block 4 of the Worksheet and enter the amounts from Lines 423(d) on Appendix A line 1, and 423(e) on Appendix A line 2.
- Providers whose estimated contributions to universal service support mechanisms would be less than $10,000 are considered *de minimis* for universal service contribution purposes and will not be required to contribute directly to universal service support mechanisms.

b. Exception for government, broadcasters, schools, and libraries

The following non-common-carrier entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet unless they contribute to TRS, LNP, or NANPA:[19]

- Government entities that purchase telecommunications services in bulk on behalf of themselves, such as state networks for schools and libraries.
- Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules or any entity providing interstate telecommunications exclusively to public safety or government entities that do not offer services to others.
- Broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers.

c. Exception for systems integrators and self-providers

Systems integrators: Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service.[20] Systems integrators provide integrated packages of services and products that may include, but are not limited to computer capabilities, interstate telecommunications, remote data processing services,

[18] Sections 54.706, 54.711, and 54.713 of the Commission's rules require all telecommunications carriers providing interstate telecommunications services, interconnected VoIP providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to the universal service fund and file a FCC Form 499-Q on February 1, May 1, August 1, and November 1 each year. 47 CFR §§ 54.706, 54.711, 54.713. The FCC Form 499-Q sets forth information that the contributor must submit, so that the Administrator of the universal service support mechanisms may calculate and assess contributions. *See* Telecommunications Reporting Worksheet, FCC Form 499-Q (2024~~3~~) Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms, OMB Control Number 3060-0855 (~~September 2022~~Insert Release Date).

[19] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9187, para. 800 (1997) (*Universal Service First Report and Order*).

[20] Note that systems integrators that have contribution obligations to other support mechanisms (TRS, NANPA, or LNPA) must file this worksheet.

back-office data processing, management of customer relationships with underlying carriers and vendors, provision and maintenance of telecommunications and computer equipment, and help desk functions.[21] However, systems integrators must file this Worksheet if they have contribution obligations to other support mechanisms (TRS, NANPA or LNPA).

Self-Providers: Entities that provide telecommunications only to themselves or to commonly-owned affiliates need not file.[22]

d. Filing Exemption for Marketing Agents

Marketing agents, i.e., entities that market services on behalf of a telecommunications provider, are not telecommunications providers and are not required to file this Worksheet. The amounts remitted to or retained by the marketing agent are treated as expenses of the underlying provider and may not be deducted from the provider's revenues. A telecommunications reseller is not a marketing agent and must file this Worksheet.

B. WHICH TELECOMMUNICATIONS PROVIDERS MUST CONTRIBUTE FOR WHICH PURPOSES

Table 1 summarizes which telecommunications carriers and service providers must directly contribute for particular purposes. This chart is provided for informational purposes only. It is not intended to be exhaustive, nor is it intended to serve as legal guidance or precedent. Filers are instructed to consult the Commission's rules and orders to determine whether they must contribute to one or more of the mechanisms. *See* 47 CFR §§ 52.17, 52.32, 54.706, 64.604.

Table 1: Which Telecommunications Providers Must Contribute Directly for Which Purposes

Type of filer	**Universal Service**	**TRS**	**NANPA**	**LNPA**
Non-interconnected VoIP providers with no other telecommunications revenues		X		
De minimis payphone aggregators that do not also have telecommunications carrier revenues		X		
Other payphone aggregators that do not also have telecommunications carrier revenues	X	X		
De minimis telecommunications providers (including audio-bridging service providers) with no telecommunications service revenues				

[21] *See Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5471-75 (1997).

[22] *See Universal Service First Report and Order*, 12 FCC Rcd at 9187, para. 800.

Other telecommunications providers (including audio-bridging providers) with no telecommunications service revenues	X			
Telecommunications carriers that provide only intrastate service		X	X	X
Telecommunications carriers that provide services only to other universal service contributors			X	X
Telecommunications carriers that provide only international services		X	X	X
De minimis interstate telecommunications carriers (including satellite carriers and common-carriage stand-alone audio-bridging service providers) and *de minimis* interconnected VoIP providers		X	X	X
All other interstate telecommunications carriers (including satellite carriers and common-carriage stand-alone audio-bridging service providers) and all other interconnected VoIP providers	X	X	X	X

As shown above, some providers may be exempt from contributing to USF, but nevertheless must file this Worksheet because they are required to contribute to TRS, NANPA, or LNPA. If an entity is not required to contribute to any of these support mechanisms, then it is not required to file this Worksheet.

- For USF purposes, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of USF pass-through surcharges.
- Providers who do not file this Worksheet because they are *de minimis* for USF contribution purposes, and need not file for any other purpose, should retain the table contained in Appendix A and documentation of their contribution base revenues for <u>five</u> calendar years after the date each Worksheet is due.[23]
- Interconnected VoIP providers who are *de minimis* must file this Worksheet and retain the table and documentation of their contribution base revenues for <u>five</u> calendar years after the date each Worksheet is due.[24]

[23] *See* 47 CFR § 54.706(e) ("Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules"); *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16386–87, para. 27 (2007) (*USF Comprehensive Review Order*). Section § 54.711(a) of the Commission's rules, 47 CFR § 54.711, also requires contributors to "maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request."

[24] *Id.*

FILING BY LEGAL ENTITY

Each legal entity providing interstate telecommunications for a fee or providing interstate interconnected VoIP service, including each affiliate or subsidiary of an entity, must separately complete and file a copy of the Worksheet, except as provided below.[25] Entities with distinct articles of incorporation, articles of formation, or similar legal documents are separate legal entities. Each legal entity, affiliate, and subsidiary must identify its ultimate controlling parent or entity, or provide a common identifier for all of its affiliated filers on Block 1, Line 106.

As an alternative to each affiliate filing separately, entities may file on a consolidated basis but must certify each year that they meet all of the following conditions:[26]

- A single entity oversees the management of all affiliated systems;
- A single entity sends bills to customers identifying it (or a trade name) as the service provider, rather than identifying the individual legal entities;
- All revenues are posted to a single general ledger;[27]
- If separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- Customers have a single point of contact;
- The consolidated filer acknowledges that process served on it would represent process served on any or all of the affiliated legal entities;
- The consolidated filer agrees to document and resolve all slamming complaints that might be served on either it or any of the affiliated legal entities;[28]
- The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
- The consolidated filer acknowledges that its universal service, TRS, LNP, NANPA, and regulatory fee obligations will be based on data provided in the consolidated Worksheet filings, that it bears the responsibility of satisfying those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- The consolidated filer acknowledges that it: (1) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, TRS, LNP, NANPA, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (2) was not left with unreasonably small capital as a result of such

[25] *See* 47 CFR § 64.1195 (outlining the Commission's registration requirements).

[26] *See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (*Consolidated Reporting Order*); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002) (*2002 First Contribution Methodology Order and FNPRM*).

[27] The FCC Form 499 Filings for the consolidated filer must reflect all revenues in this general ledger.

[28] A Commercial Mobile Radio Service (CMRS) carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filer or any of its affiliated legal entities that also are not subject to the slamming regulations.

undertaking or payments; and (3) was not left unable to pay debts as they matured as a result of such undertaking or payments.[29]

This certification should be filed with the Commission's Data Collection Agent (*see* address in Table 3) and must also include:

- A list of the legal names of all the legal entities covered by the filing. See instructions to Line 112 regarding the reporting of these legal names on the Worksheet.
- The FCC Form 499 Filer IDs of all the legal entities covered by the filing
- The consolidated filer's FRN
- For wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing

Filers filing on a consolidated basis should be aware that any penalties associated with failure to pay or underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

C. HOW TO FILE

1. NO FILING FEE

There is no fee to file this form.

2. WHEN TO FILE

This section provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day. *See* 47 CFR § 1.4(e)(1).

[29] For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

Table 2: Filing Schedule for One-Time Requirements

What to file	When to file	Where to file
New telecommunications carriers and other telecommunications providers must register with the Commission when they begin to provide service.[30] Registration with the Commission includes obtaining an FCC registration number ("FRN") from the Commission registration system ("CORES") and obtaining a Filer ID from USAC's E-File system. If a new filer had already started providing telecommunications services prior to its registration with the FCC and obtaining a 499 Filer ID from USAC, it must file FCC Forms 499-A for all prior applicable years in which it provided telecommunications services and/or VoIP. New carriers and VoIP providers (including interconnected and non-interconnected) must identify an agent for service of process within the District of Columbia. Although alternate agents may be included in the filing, a resident D.C. agent must be designated. Carriers that hold international section 214 authorizations must designate a U.S. citizen or U.S. lawful permanent resident as their agent for service of process.	Upon beginning to provide service, but no later than 30 days after beginning to provide service.	FCC (to obtain an FRN) https://apps.fcc.gov/cores/userLogin.do USAC (to obtain a 499 Filer ID) https://www.usac.org/service-providers/contributing-to-the-usf/register-for-a-499-id/ Such information is provided at Page 2, Block 2 of the FCC Form 499-A.
Filers must update their registration information, including a DC Agent for Service of Process in accordance with these instructions to the FCC Form 499-A.	Within one week of the contact information change.	Filers wishing to update Preparer information, headquarter address, billing contact information, or DC Agent for Service of Process, can submit either an FCC Form 499-A or an FCC Form 499-Q or, for billing-related matters only, email USAC's billing department.[31] Filers wishing to update any other information must submit a revised FCC Form 499-A. For more information, see https://www.usac.org/service-providers/contributing-to-the-usf/making-revisions/

[30] Registration information includes information reported in Blocks 1 and 2 of the Telecommunications Reporting Worksheet.

[31] Filers seeking to update limited DC agent information such as an address and/or telephone number change for more than twenty registrations at one time may contact USAC and request permission to submit a summary Excel-styled document containing these changes. Generally, changing an agent requires submission of an FCC Form 499-A with the accompanying officer certification.

What to file	When to file	Where to file
Filers that cease providing telecommunications must deactivate their Filer ID with USAC by submitting a letter with termination date and information on their successor entity to USAC. Filers must also update their CORES ID information with the Commission	Within 30 days of the date that the company ceased providing service.	FCC https://apps.fcc.gov/cores/userLogin.do USAC https://www.usac.org/service-providers/contributing-to-the-usf/manage-your-499-id/

Table 3: Filing Schedule for Annual Reporting Requirements

What to file	When to file	Where to file
Completed FCC Form 499-A	April 1[32]	Data Collection Agent https://forms.universalservice.org
Completed FCC Form 499-Q (universal service contributors only)	February 1 May 1 August 1 November 1	Data Collection Agent c/o Universal Service Administrative Company https://forms.universalservice.org
Traffic studies relied on by providers to report interstate and/or international revenues on FCC Form 499-A *See* section IV.C.5.h for format and content requirements for traffic studies	April 1	Data Collection Agent - via Email c/o Universal Service Administrative Company form499@usac.org
Consolidated filer certification *See* section III.B for format and content requirements for consolidated filer certification	April 1	Data Collection Agent - via Email c/o Universal Service Administrative Company form499@usac.org

Do not send universal service, TRS, NANPA or LNPA contributions with the Worksheet or to any of the above listed addresses. The appropriate administrators will calculate the amount of contribution due and send a bill to the billing contact person and billing address identified on Line 208 of the FCC Form 499-A. *See* Table 4 for contribution bases used by the USF, TRS, NANPA and LNPA administrators to determine contribution obligations.

3. ELECTRONIC FILING

Filers capable of accessing the Internet are required to file this form electronically. For information on filing electronically, go to https://www.usac.org/service-providers/contributing-to-the-usf/forms-to-file/.

Filers may file the consolidated filer certifications and traffic studies by submitting paper copies to: **Form 499 Data Collection Agent c/o USAC, 700 12th Street N.W., Suite 900, Washington, D.C. 20005**.

D. OBLIGATION TO FILE REVISIONS

Line 612 provides check boxes to show whether the Worksheet is the original April 1 filing for the year, a registration form for a new filer, a revised filing with updated registration information, or a revised filing with updated revenue data for the year.

[32] ~~In 2023, April 1 is a Saturday. Accordingly, in 2023, FCC Forms 499-A, as well as any accompanying traffic studies or filer certifications, will be due on Monday, April 3, 2023.~~

Filers must submit a revised Form 499-A if there is any change in any of the following types of information:

- Filer identification in Block 1
- Regulatory contact information in Block 2-A
- Agent for service of process in Block 2-B
- FCC registration information in Block 2-C

Filers must also submit revised worksheets if they discover an error in their revenue data.

- Since companies generally close their books for financial purposes by the end of March, such filers should base the April filing on closed books.
- In filing a revised Worksheet, filers should not include routine out-of-period adjustments to revenue data unless such adjustments would affect a reported amount by more than ten percent.
- **Filers must submit any revised Worksheet <u>that would result in decreased contributions</u> by March 31 of the year after the original filing due date.**[33]

Filers should <u>not</u> file revised revenue information to reflect mergers, acquisitions, or sales of operating units.

- If a filer that submitted a Form 499-A no longer exists, its successor company is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify the Form 499 Data Collection Agent.
- If the operations of an entity ceased during the previous calendar year and are now part of a successor, the successor must include the previous calendar year revenues of the now-defunct entity with its own Worksheet. Thus, it is the successor company's responsibility to ensure that the revenues for both companies for the previous calendar year are accounted for in their entirety.
- The entity that ceased operations may owe, or its successor may owe, additional universal service contributions or may be due refunds, depending on how its FCC Form 499-A Worksheet compares to previously filed FCC Form 499-Q Worksheets.
    - Such entities are not liable for TRS, LNP, or NANPA contributions for the upcoming year. Check the appropriate boxes on Line 603 and write "Not in business as of filing date" on the explanation line.

E. RECORDKEEPING

Filers shall maintain records and documentation to justify information reporting on the Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for five years.[34] Additionally, filers must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's Office of Inspector General, to the Universal Service Administrative Company (USAC), and to auditors upon request.[35] Review by the Commission or USAC may cover any existing corporate records, not just those

[33] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order, 20 FCC Rcd 1012, 1013, para. 2 (Wireline Comp. Bur. 2004), *pet. for recon. and applications for review pending*.

[34] *See* 47 CFR § 54.706(e) ("These records shall include without limitation the following: Financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.").

[35] *See id*.; 47 CFR § 54.711(a).

specifically maintained for these purposes.[36] Entities acquiring carrier operations through consolidation, merger, etc., must maintain the records of the acquired entity.[37]

F. COMPLIANCE

Failure to file the Worksheet, submit traffic studies (if applicable), submit supporting documentation upon request, and pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law.[38] In addition, entities may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.[39] Inaccurate or untruthful information contained in the Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code.[40]

G. ROUNDING OF NUMBERS AND NEGATIVE NUMBERS

Dollar Amounts. — Reported revenues in Blocks 3, 4, and 5 greater than one thousand dollars may be rounded to the nearest thousand dollars. Dollar amounts may be reported in whole dollars. For example, $2,271,881.93 could be reported at $2,271,882 or $2,272,000, but not $2272 thousand, $2,270,000.00, or $2.272 million. Enter $0 in any line for which the filer had no revenues for the year.

Negative Numbers. — Filers are directed to provide billed revenues without subtracting any expenses, allowances for uncollectibles, or settlement payments and without making out-of-period adjustments. Therefore, do not enter negative numbers on any billed revenue lines on the Worksheet. *See* instructions for Lines 421 and 422 regarding uncollectibles.

IV. SPECIFIC INSTRUCTIONS

A. BLOCK 1: FILER IDENTIFICATION INFORMATION

Block 1 of the Telecommunications Reporting Worksheet reports identification information.

Line 101	499 Filer ID

USAC assigns an FCC Form 499 Filer ID number once a company completes the online registration process at https://efile.universalservice.org/ContributorRegistration/V2/. This number is then used for the company to file subsequent FCC Forms 499. Filer 499 ID numbers can be found at:

- FCC Form 499 Filer Database (http://apps.fcc.gov/cgb/form499/499a.cfm)
- Telecommunications Provider Locator (https://www.fcc.gov/encyclopedia/telecommunications-provider-locator)

Line 102	Legal Name of Filer

[36] *See* 47 U.S.C. § 218.

[37] *See* 47 CFR § 42.1.

[38] In addition, pursuant to the Debt Collection Improvement Act of 1996, the Commission shall withhold action on applications or other requests for benefits by delinquent debtors and dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. *See* 47 CFR § 1.1910; *Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, 19 FCC Rcd 6540 (2004).

[39] *See* 47 CFR § 54.713 (universal service); 47 CFR § 64.604(c)(5)(iii)(A) and (B) (TRS); *see also* 47 CFR § 52.17(b) (NANPA); 47 CFR § 52.32(c) (LNPA).

[40] *See* 47 CFR § 54.711.

Enter the legal name of the filer as it appears on articles of incorporation or articles of formation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis. *See* section III.B.

Line 103	IRS Employer Identification Number

Enter the Internal Revenue Service (IRS) employer identification number (EIN) for the filer, which should be the same EIN that the company uses to file any federal taxes, if the filer offers services subject to such taxes.

- Do not use individual social security numbers for the federal EIN.
- If a filer lacks an EIN (*i.e.* has no taxpayer identification number to provide other than an individual social security number), it should contact USAC (see section II for contact information) so that it can be assigned an alternative identification number.
- Consolidated filers must provide the EIN of the holding company.

Line 104	Doing Business As Name

Enter the principal name under which the filer conducts telecommunications activities, typically the name that appears on customer bills or the name used when service representatives answer customer inquiries.

Line 105	Telecommunications Activities of Filer

Mark the boxes that describe the telecommunications activity or activities of the filer. If more than one is appropriate, label the activities in order of importance to the filer's business. Enter a 1 in the box that is the most important activity, a 2 in the next most important, etc., but select no more than 5 categories. An explanation of the categories appears in Appendix B.

Line 106	Affiliated Filers/ Holding Company Information

Enter a common identifier for all affiliated filers (the "Affiliated Filers Name"). This is typically the name of the filer's holding company or controlling entity, if any. Amongst a large group of affiliates, this may be the name of the predominant commonly owned or controlled entity. All reporting affiliates or commonly owned entities should have the same Affiliated Filers Name and IRS employer identification number appearing on Line 106.1 and 106.2 respectively. For those entities also required to ~~file FCC Form 477~~submit information to the Broadband Data Collection (BDC) system, use the same single name that is used in the FCC Form 477 and/or the BDC broadband deployment submissions to indicate common ownership or control.[41]

- Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."[42] For this purpose, the term 'owns' means "to own an equity interest (or the equivalent thereof) of more than 10 percent."[43]
- If the filer has no affiliates, check the appropriate box on Line 106.

Line 107	FCC Registration Number

[41] The Commission adopted an Order ending the collection of broadband deployment data through the FCC Form 477 in December 2022. *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, paras. 11-10, Order, FCC 22-93 (rel. Dec. 9, 2022). Pursuant to the Order, the Commission continues to collect broadband and voice subscription data using the FCC Form 477, but filers submit such data solely through the BDC system. *Id.* at para. 13.

[42] *See* 47 U.S.C. § 153(2).

[43] *Id.*

Enter the FCC Registration Number (FRN) of the filer. The FRN is a ten-digit number that includes a check-digit and is used to identify an entity within all Commission Licensing/Filing systems and the Commission's Revenue Accounting Management Information System (RAMIS). The number is assigned by the Commission Registration System (CORES). For more information, *see* https://apps.fcc.gov/cores/userLogin.do.

Line 108	Management Company

Enter the name of the management company if the filer is managed by an entity other than itself. If the filer and one or more telecommunications provider(s) are commonly managed, then each should show the same management company on Line 108. Filers need not be affiliated to have a common management company. The management company would typically be the point of contact for the administrators of the support mechanisms.

Line 109	Mailing Address of Corporate Headquarters

Enter the complete mailing address of the corporate headquarters of the filer.

Lines 110-111	Business Address/ Telephone Number for Customer Inquiries and Complaints

Line 110. — Enter a business address for the filer that could be used either for customer inquiries or that parties could use to contact the filer in order to resolve complaints. Check the box if this address is the same as the mailing address of the corporate headquarters on Line 109.

Line 111. — Enter a telephone number that can be used to resolve customer complaints, for customer service, or for billing inquiries, such as a customer toll-free number.

Line 112	Trade Names

Enter all names that the filer used in the past three years for providing telecommunications.

- Enter all names by which the filer would be known to customers, government bodies, creditors, the press, etc.
- Consolidated filers should provide all names used by all telecommunications affiliates covered by the filing.
- The list must include the filer's billing agents if those parties, rather than the filer, are identified on customer bills.
- The list should also include names of predecessor companies that would have contributed to universal service, TRS, NANP, or LNP or filed a Telecommunications Reporting Worksheet in the prior year. In such cases, include the prior Filer 499 ID as part of the name, as this information will be used by the administrators in instances where other information indicates that a non-filer might exist and also to ensure that entities are not billed improperly for predecessor companies that no longer exist.
- If there is insufficient space to enter all names, contact USAC.

B. BLOCK 2: CONTACT INFORMATION

Block 2 of the Telecommunications Reporting Worksheet reports contact information for regulatory and billing purposes.

1. BLOCK 2-A: REGULATORY CONTACT INFORMATION

Line 201	499 Filer ID

Enter the Filer 499 ID from Line 101.

Line 202	Legal Name of Filer

Enter the legal name of the filer from Line 102.

Line 203-206	Person Who Completed This Worksheet/ Contact Information

Enter the name and telephone number of the person who filled out the FCC Form 499. An email address is also required and will not be publicly released. This person should be able to provide clarifications or additional information and, if necessary, serve as the first point of contact if either the Commission or an administrator should choose to verify or audit information provided in the Worksheet.

Line 207	Corporate Office to Which Correspondence Should Be Sent

Enter the contact person name, office name, and mailing address of a corporate office to which correspondence regarding this Worksheet should be sent. An email address is also required and will not be publicly released. USAC does NOT send Worksheets to this address; all Worksheets must be filed using USAC's electronic filing system. Failure to receive a Worksheet from an administrator or the FCC does not relieve the filer from its obligation to file in a timely fashion.

Line 208	Billing Contact Information

Line 208 — Enter a billing contact person name and address for administrators to send billing information for contributions. An email address is also required and will not be publicly released. Information on establishing electronic fund transfer and bills for universal service, TRS, NANPA, or LNPA contributions will be sent to this address unless other arrangements are made via written request.

Line 208.1 — An FCC ITSP regulatory fee bill, if due, will be sent to the email address specified on Line 208.1. FCC inquiries regarding ITSP regulatory fees will also be sent to this email address. Carrier questions regarding ITSP regulatory fee bills should be directed to the FCC Financial Operations Help Desk, 877-480-3201.

Although a filer may or may not use the same contact information for Lines 207 and 208, it is the filer's responsibility to ensure that accurate information is provided on both lines. A filer will be responsible for any late fees, interest or penalties incurred as a result of its failure to provide accurate contact information on this form.

2. BLOCK 2-B: AGENT FOR SERVICE OF PROCESS

Section 413 of the Act requires each common carrier "to designate in writing an agent in the District of Columbia" upon whom all notices, process, orders, and decisions made by the Commission may be served on behalf of that carrier in any proceeding pending before the Commission. The Commission has also extended this requirement to interconnected and non-interconnected VoIP providers.[44] Carriers that hold international section 214 authorizations must designate a U.S. citizen or U.S. lawful permanent resident as their agent for service of process.[45]

Lines 209-218	Agent for Service of Process

[44] 47 U.S.C. § 413; *see* 47 CFR § 1.47(h) (interconnected VoIP providers); *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Report and Order, 26 FCC Rcd 14352, 14542, para. 21 (2011) (non-interconnected VoIP providers).

[45] 47 U.S.C. § 413; *see* 47 CFR § 1.47(h); *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd 10927, 10951-52, paras. 68-69, (2020) (*Executive Branch Process Reform Report and Order*).

Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must enter the company name, contact person name, business address, telephone or voicemail number, ~~,~~and, if available, fax number and email address for their designated D.C. Agent.

Carriers, interconnected VoIP providers, and non-interconnected VoIP providers *must* designate a *single* agent for service of process in D.C. for all Commission business. Service of any notice, process, orders, decisions, and requirements of the Commission may be made upon the filer by leaving a copy thereof with this designated agent during normal business hours at the agent's office or other usual place of residence.

In addition to this information, the filer may elect to provide a local or alternate agent for service of process located outside D.C. Filers other than carriers, interconnected VoIP providers, and non-interconnected VoIP providers need only report one agent for service of process, whether located inside D.C. or otherwise. Although the FCC Form 499-A permits carriers, interconnected VoIP providers, and non-interconnected VoIP providers to designate a preferred alternate or local agents for service of process, each designated agent for a particular carrier, interconnected VoIP provider or non-interconnected VoIP provider must accept service for all purposes relating to Commission business. A carrier, interconnected VoIP provider or non-interconnected VoIP provider may not limit a designated agent's ability to accept service on behalf of the carrier, interconnected VoIP provider or non-interconnected VoIP provider by subject matter, jurisdiction, affiliate or any other grounds. The Commission may assume that the local or alternate agent is the filer's preferred destination for all service of process.

New carriers and VoIP providers (including interconnected and non-interconnected) must identify an agent for service of process, must register with the FCC within 30 days of providing service, and all carriers or VoIP providers (including interconnected and non-interconnected) must notify USAC within one week if the contact information changes for their D.C. Agent. *See* Table 2 for more information.

3. BLOCK 2-C: FCC REGISTRATION INFORMATION

New telecommunications carriers and other telecommunications providers must register with the Commission when they begin to provide service. Carriers and other telecommunications providers must update registration information within one week of a material change. Registration information includes information reported in Blocks 1 and 2 of the Telecommunications Reporting Worksheet.

Lines 219-226	FCC Registration Information

As explained above, virtually all carriers filing the FCC Form 499 are considered to be interstate carriers. They, along with interconnected and non-interconnected VoIP providers, must provide the names and business addresses of their Chief Executive Officer, Chairman, and President.

Refer to the following list for instructions for different types of providers:

- If the filer does not have one or more of these officers, then names should be supplied for the three most senior-level officers of the filer
- If the same person occupies more than one position, then names should be supplied for the three most senior-level officers of the filer
- If the filer is a sole proprietorship, list only one name
- If the filer is a partnership, list the managing partner on Line 221
- If the filer is owned by two partners, list the second partner on Line 223
- If there are three or more partners, list information for the managing partner and the two other partners with the greatest financial interest in the partnership

For purposes of this filing, an officer is an occupant of a position listed in the article of incorporation, articles of formation, or other similar legal document.

Line 227	Jurisdictions in Which Filer Provided/ Will Provide Service

Check those jurisdictions where the filer provided telecommunications service or interconnected VoIP service in the past 15 months, and any additional jurisdictions in which the filer expects to provide such services in the next 12 months. Identify jurisdictions where customers physically obtain service, and for switched services, identify jurisdictions where customers can originate calls. For services where the called party pays, however, also identify jurisdictions where calls terminate.[46] For example, an operator service provider that handled inmate calls originating in New Jersey and terminating collect in New Jersey, New York, and Pennsylvania would identify those three states as jurisdictions served.

Line 228	Year and Month that Filer First Provided/ Will Provide Service

Enter the year and month that the filer first provided telecommunications or interconnected VoIP service. If not yet providing either type of service, then the filer should indicate the year and month it expects to begin operations. If operations began prior to January 1, 1999, the filer may so indicate by using the check box rather than entering the specific date.

C. BLOCKS 3 AND 4-A: FILER REVENUE INFORMATION

Blocks 3 and 4-A of the Telecommunications Reporting Worksheet report revenue information for calendar year 2022.

For most filers, completing Lines 303–314 and 403–418 is a three-step process.

First, the filer must assign its gross billed revenues to reporting categories (generally, the rows on Form 499-A), which includes allocating revenues from bundled services between their telecommunications and non-telecommunications components. *See* Section IV.C.2.

Second, the filer must attribute telecommunications revenues derived from sales to contributing resellers (Block 3 on Form 499-A) or from sales to end users (Block 4 on Form 499-A). *See* Section IV.C.4.

Third, the filer must apportion its telecommunications revenues between the intrastate, interstate, and international jurisdictions (generally, the columns on the FCC Form 499-A). *See* Section IV.C.5.

1. FILER IDENTIFICATION

Line 301 Line 401	499 Filer ID

Enter the Filer 499 ID from Line 101.

Line 302 Line 402	Legal Name of Filer

Enter the legal name of the filer from Line 102.

2. GROSS BILLED REVENUES – GENERAL

Report gross billed revenues as directed.

- Note on Gross Earned Revenues Reporting. — Filers that maintain records in accordance with Generally Accepted Accounting Principles and that record revenues when earned instead of when

[46] Both parties to a collect call are "consumers." 47 C.F.R § 64.708; *see* 47 C.F.R § 64.710(b)(1).

billed, may use earned revenues to represent billed revenues as long as they do so consistently from reporting period to reporting period. These revenues should not include amounts that cannot be billed to customers. Filers using earned revenues to represent billed revenues need not impute earned revenue for redeemed credits if no earned revenue is recorded when credits are redeemed. To the extent that earned revenues are net of any uncollectible amounts, these uncollectible amounts must not be included on Line 421 or Line 422.

Gross billed revenues include:

- Revenues from all sources, including non-regulated telecommunications offerings, information services, and other non-telecommunications services.
- Total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments.
- Gross billed revenues include:
  - Account set-up
  - Connection
  - Service restoration
  - Termination
  - Revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services
  - Collection overages and unclaimed refunds for telecommunications and telecommunications services when not subject to escheats
  - Surcharges on telecommunications services or interconnected VoIP services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract
  - Any other non-recurring charges.

  These charges should be reported on the same line that the filer reports any associated recurring revenue.

Gross billed revenues do NOT include:

- Deposits
- Amounts that cannot be billed to customers and may be distinct from booked revenues
- Taxes
- Surcharges that are not recorded on the company books as revenues and are remitted to government bodies
  - BUT any charge on a customer bill represented to recover or collect contributions to federal and state universal service support mechanisms must be shown separately on Line 403.

Special cases:

- National Exchange Carrier Association (NECA) pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool.
- Entities making consolidated filings must include in their FCC Form 499 Filings all revenue on the consolidated books of account.

- Credits should not be deducted from billed revenues when the credit is issued. Instead, filers should include redeemed credits with uncollectible amounts reported on Line 421 and Line 422.
- Mergers and acquisitions: When two filers merge, the successor company should report total revenues for the reporting period for all predecessor operations, unless the filers maintain separate corporate identities and both continue to operate. In that special case, each filer should continue to report its revenues separately.[47] Where an entity obtains, by any means whatsoever, the telecommunications operations or customer base of a filer, and the acquired company does not file its own FCC Form 499-A, the acquiring company must report all telecommunications revenues associated with such operations or customer base including revenues billed in the calendar year prior to the date of acquisition.
- International Services: For international services, gross billed revenues consist of gross revenues billed by U.S. telecommunications providers with no allowances for settlement or settlement-like payments. International settlement and settlement-like receipts for foreign-billed service should not be included in U.S. telecommunications revenues, but should be reported on Line 418.[48] Note that if the filer receives the foreign-bound traffic in the United States, then it is providing ordinary international service from the United States to a foreign point; receipts from the originating carrier should be reported as revenue on Line 414.
    - Revenue from circuits within the United States that connect a customer to an international circuit should be reported as interstate. Revenue from circuits that connect two foreign points should be reported on Line 418.
    - Reporting of international revenues should be consistent with the definitions provided in Appendix C below.[49]

3. APPORTIONING REVENUES AMONG REPORTING CATEGORIES

a. General Information

Good-faith estimates

If revenue category breakout cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet a good-faith estimate of the breakout.

- Good-faith estimates should be based on information that is current for the filing period.
- Filers should maintain documentation for good-faith estimates and entities may not simply report all revenues on one of the "other revenue" lines.

Column (a) required

Filers with any revenues for Lines 303–314 and 403–420 may not omit the dollar amounts from column (a), even if all of the revenues are for interstate or international services.

Block 3 vs. Block 4 revenues

[47] *See* Section III.C.

[48] For example, if a filer receives payment from a foreign carrier for traffic that the filer receives outside of the United States, brings into the United States, and then reoriginates and carries to a foreign point, the filer would not include those settlement-like payments as revenues on Line 414 of the FCC Form 499-A. Instead, those amounts would be reported on Line 418.

[49] The definitions in Appendix C were derived from the 2016 Filing Manual for Section 43.62 Annual Reports, consistent with past FCC Form 499 filing requirements.

Filers may report revenues from contributing resellers (i.e., universal service contributors) on Lines 303 through 314 and must report all other revenues on Lines 403 through 418. *See* Section IV.C.4 for additional information on reporting revenues from resellers.

- In many cases, the line-item categories are duplicated in Block 3 and Block 4.
- *Intercarrier compensation and universal service support:* The following categories of revenues are not end-user revenue and are reported in Block 3. For these revenue items, the filer is not required to retain Filer 499 ID information or verify that the customer is a reseller.

Category of Revenue	**Report on**
Per-minute switched access charges and reciprocal compensation	Line 304
Revenues received from carriers as payphone compensation for originating toll calls	Line 306
Charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6)	Line 307
Revenues that filers receive as universal service and other similar support from either states or the federal government	Line 308
Revenues received from another U.S. carrier for roaming service provided to customers of that carrier	Line 309

- *Carriers required to use the USOA:* Carriers that are required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's rules should base their responses on their USOA account data and supplemental records, dividing revenues into those received from universal service contributors and those received from end users and other non-contributors.[50]
- *Certain international switched service revenues*: An underlying carrier also may include as carrier's carrier revenues any international switched service revenues received from another U.S. reselling carrier where that reselling carrier is using the underlying carrier's service to reoriginate the foreign-billed traffic of a foreign telephone operator. In this case, the reselling carrier must certify to the underlying carrier that it is using the resold international switched service to handle traffic that both originates and terminates in foreign points.

All filers should report revenues based on the following descriptions.

[50] *See* section IV.C.4.

b. Fixed local service revenue categories

Fixed local services connect a specific point to one or more other points. These services can be provided using either wireline, fixed wireless, or interconnected VoIP technologies and can be used for local exchange service, private communications, or access to toll services.

Line 303 (Carrier's carrier) **Line 404 (End user)**	**Monthly service, local calling including message and local toll charges, connection charges, vertical features, and other local exchange services**

Lines 303 and 404 should include the basic local service revenues, except for:

- local private line revenues (reported on Lines 305 and 406);
- business data services revenues (reported on Lines 305 and 406);
- revenues from providing mobile or cellular services (reported on lines 309, 409, and 410);
- subscriber line charges levied under a tariff filed by the filer or placed on customer bills as a pass-through of underlying carrier subscriber line charges (reported on line 405).

Lines 303 and 404 should include charges for:

- optional extended area service;
- dialing features;
- local directory assistance;
- added exchange services such as automatic number identification (ANI) or teleconferencing;
- LNP surcharges;
    - Revenues from federally tariffed LNP surcharges should be reported on Line 404, and should be identified as interstate revenues.
- connection charges;
- charges for connecting with mobile service; and
- local exchange revenue settlements.

Interconnected VoIP providers not reporting based on the safe harbor that bundle fixed local exchange service with interstate toll services at a unitary price must determine the appropriate portion of revenues to allocate to interstate and international toll service, in a manner that is consistent with their supporting books of account and records.

Filers should break out Line 303/404 revenues as follows:

Carrier's Carrier Revenue

Line 303.1	Revenues for services provided to carriers as unbundled network elements (UNEs).
Line 303.2	Revenues for services provided to carriers under tariffs or arrangements other than unbundled network elements (for example, resale). Line 303.2 should also include Presubscribed Interexchange Carrier Charge (PICC) charges levied on carriers.

End-User Revenue

Line 404.1	Local service portion of revenues from local exchange service plans (other than interconnected VoIP plans) that include interstate calling as part of the flat monthly fee.
Line 404.2	Toll portion of revenues from local exchange service plans (other than interconnected VoIP plans) that include interstate calling as part of the flat monthly fee. (Note: if the revenue from the toll portion of such service is attributed to an affiliate, that affiliate must report such revenues on Line 404.2, not on Line 414).
Line 404.3	Revenues from local exchange services plans (other than interconnected VoIP plans) that do not include interstate calling.
Line 404.4	Revenues from local service provided via interconnected VoIP service offered in conjunction with a broadband connection.
Line 404.5	Revenues from local service provided via interconnected VoIP service offered independent of the broadband connection.[51]

Line 404 should not include subscriber line charges levied under a tariff filed by the filer or placed on customer bills as a pass-through of underlying carrier subscriber line charges. Filers should instead report such revenues on line 405. Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service; these amounts are separate from toll revenues and correspond to the revenues received by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls. Incumbent LEC filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d) of the appropriate line 404.1–404.5.[52] Line 404.1–404.5 should, however, include revenues from federally tariffed LNP surcharges, which should be identified as interstate revenues.

Line 304	**Per–minute charges for originating or terminating calls**

This line includes:

- Per–minute charges for originating or terminating calls, including charges related to originating or terminating VoIP-PSTN traffic.[53]

[51] Bundled offerings include those offered directly by the filer and those offered by the filer through an affiliate.

[52] *See Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Mark Twain Telephone Company*, WC Docket Nos. 10-90, 06-122, Order, DA 22-757, at para. 18 & n.62 (WCB July 15, 2022).

[53] *See Connect America Fund et al*., WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18005-08, paras. 940-42 (2011) (*USF/ICC Transformation Order)*, aff'd.,*sub nom.* In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014) (setting forth default intercarrier compensation rates for VoIP-PSTN traffic); *Connect America Fund et al*., WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, 4659-4663, paras. 30-35 (2012) (the Commission allowed local exchange carriers (LECs) to tariff default rates equal to their intrastate originating access rates for originating intrastate toll VoIP traffic until June 30, 2014, after which time LECs are to tariff default rates for such traffic equal to their interstate originating access rates).

- Revenues to the local exchange carrier for messages between a cellular customer and another station within the mobile service area.
- Any other gross charges to other carriers for the origination or termination of toll or non-toll traffic.
- Direct trunk transport, port charges, mileage charges and rearrangement charges that are normally treated as access charge revenues.[54]

Do not deduct or net payments to carriers for origination or termination of traffic on their networks.

This line does not include:

- International settlement or settlement-like receipts or transiting fees from international toll services.

Filers should break out Line 304 revenues as follows:

Line 304.1	Revenues for originating and terminating minutes provided under state or federal access tariffs.
Line 304.2	Revenues for originating and terminating minutes provided as unbundled network elements or other contract arrangements.

Line 405	**Tariffed subscriber line charges, Access Recovery Charges, and PICC charges levied by a local exchange carrier on a no-PIC customer**

Line 405 should include charges to end users specified in access tariffs, such as tariffed subscriber line charges (SLCs), Access Recovery Charges (ARCs),[55] and Primary Interexchange Carrier Charges (PICCs) levied by a local exchange carrier on customers that are not presubscribed to an interexchange carrier (i.e., a no-PIC customer). Note that federal SLCs are separate from toll revenues.

Line 405 should not include charges to end users for business data services (which are reported on Line 406).

The Commission does not regulate how non-incumbent LECs recover the costs of the local loop, nor does it require non-incumbents to assess a non-traffic sensitive charge for the costs of providing interstate or interstate access service from their customers through a separately stated end user charge. To the extent non-incumbent contributors choose to assess a separately stated charge for the interstate portion of fixed local exchange service or interstate exchange access, they should report such revenues on Line 405 and allocate those revenues to the interstate jurisdiction, for USF contribution reporting purposes, in a manner that is consistent with their supporting books of account and records.[56]

[54] 47 CFR Part 69.

[55] The Commission allowed incumbent LECs to assess an ARC on certain wireline telephone customers, a rule adopted as part of comprehensive intercarrier compensation reform. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17956-17961, 17987-17994, paras. 847-853, 905-916. The ARC is tariffed separately from the SLC; however, the Commission permitted carriers to combine the ARC and SLC as a single line item on a customer bill. *Id.,* 26 FCC Rcd at 17958, para. 852. For purposes of reporting revenues on Line 405, incumbent LECs should include all revenues collected from ARCs.

[56] For example, to the extent that a contributor's tariff filing (or equivalent) indicates that a non-traffic sensitive charge is for interstate access, then revenues for such charge (or a portion thereof) must be allocated to interstate revenues for USF reporting purposes.

Telecommunications providers that do not have SLC, ARC or PICC tariffs on file with the Commission or with a state utility commission, that are not reselling such tariffed charges, or that do not have separately stated charges for the interstate portion of fixed local exchange service or interstate exchange access should report $0 on Line 405.

Line 305 (Carrier's Carrier) Local Private Line and Business Data Service
Line 406 (End User)

Line 406 should include:

- Revenues from providing local services that involve dedicated circuits, private switching arrangements, digital subscriber lines, and/or predefined transmission paths, including those services that provide dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.
- Revenues from special access lines resold to end users unless the service is bundled with and charged as part of a toll service, in which case the revenues should be reported on the appropriate toll service line.
- Revenues from offering dedicated capacity between specified points even if the service is provided over local area switched, multi-protocol label switching (MPLS), asynchronous transfer mode (ATM), or frame relay networks.
- Revenue from broadband transmission service, including consumer broadband-only loop service, voluntarily provided on a common carrier basis to providers of retail broadband Internet access except as set forth below. This provision does not include revenue from broadband transmission service offered on a common-carrier basis by rate-of-return carriers that are exempt from the contribution obligations on those services pursuant to Commission order.[57]
- Filers should report on Line 406 revenues derived from the sale of special access service on a common carrier basis to providers of retail broadband Internet access service.[58]
- All other revenues from local private line service and business data service billed to end users must be reported on Line 406.
- Mixed-use private or WATS lines: If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate and must be reported.[59]

Line 418 should include:

- Revenues from the provision of broadband transmission service offered on a non-common-carrier basis to providers of broadband Internet access or

[57] *See Petition of NTCA – The Rural Broadband Association and the United States Telecom Association for Forbearance Pursuant to 47 U.S.C. § 160(c) from the Application of Contribution Obligations on Broadband Internet Access Transmission Services*, WC Docket No. 17-206, Order, FCC 18-75 (rel. June 8, 2018) (*Rate-of-Return Forbearance Order*).

[58] *See Universal Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780, 13797, para. 39 n.109 (2012) (*2012 Wholesaler-Reseller Clarification Order*); *Wireline Broadband Internet Access Services Order,* 20 FCC Rcd at 14915-16, paras. 112-113 & n.357; *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7549, para. 62 n.206.

[59] *See Universal Service Order*, 12 FCC Rcd at 9173, para. 778 (citing 47 CFR § 36.154(a)).

- Revenues from the provision of broadband transmission service offered on a common-carrier basis by rate-of-return carriers that are exempt from contribution obligations on those services pursuant to Commission order.[60]

Amounts reported on Line 305 should be divided between:

Line 305.1	Revenues for service provided to contributing resellers for resale as telecommunications.
Line 305.2	Revenues for service provided to contributing resellers for resale as interconnected VoIP. Revenue should not include interconnected VoIP service provided by the Filer and resold as interconnected VoIP service by reseller customers of the Filer; however, it should include private line/business data service provided by the Filer and resold as interconnected VoIP service by reseller customers of the Filer.

Line 306 (Carrier's Carrier) **Line 407 (End User)**	**Payphone Revenues**

Line 306 should include revenues received from carriers as payphone compensation for originating toll calls.

Line 407 should include revenues received from customers paid directly to the payphone service provider, including all coin-in-the-box revenues. Do not deduct commission payments to premises' owners.

Line 307 (Carrier's Carrier) **Line 408 (End User)**	**Other Local Telecommunications Service Revenues**

Include local telecommunications service revenues that reasonably would not be included with one of the other fixed local service revenue categories. Report any revenues from offering switched capacity on local area data networks such as ATM or frame relay networks.

Line 307 should include charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6).

Line 308	**Universal Service and Similar Support Amounts Received from Federal or State Government Sources**

- Universal service support revenues may include:
- Any amounts that filers receive as universal service support from either states or the federal government.
    - Filers may include the following as revenues on Line 308:
        - Lifeline and Link Up reimbursement from the Fund;
        - High Cost universal service support from the Fund;
        - Subsidy amounts for discounted services provided to schools, libraries, and rural healthcare providers. This includes (1) revenue received directly from the Fund and (2) revenue received from a school, library, or rural healthcare provider to

[60] *Rate-of-Return Forbearance Order*.

the extent such revenue is attributable to universal service subsidy amounts paid to the school, library, or rural healthcare provider.

- Include amounts received as cash as well as amounts received as credit against contribution obligations.
- Amounts received from the **federal** USF support mechanism should be attributed as either interstate or international revenues, as appropriate.

- Any non-universal service support amounts that filers receive as support from either the states or federal government.
  - Filers may include as revenues on Line 308:
    - Subsidy amounts from the Emergency Connectivity Fund, Emergency Broadband Benefit Program, and the COVID-19 Telehealth Program.

Do not include:

- Any amounts charged to customers to recover universal service or similar contributions.
- Any amounts schools, libraries, and rural health-care providers pay for the non-discounted portion of services. Such charges are properly reported as end user revenue.
- Any amounts end users pay for non-discounted portion of services. Such charges are properly reported as end user revenue.

c. Mobile service categories

Mobile services are wireless communications between mobile wireless equipment, such as cellular phones and other points.

Line 309 (Carrier's Carrier) **Line 409 and 410 (End User)**	**Mobile Services**

Data reported on these lines should contain mobile service revenues, except:

- Toll charges to mobile service customers
  - Itemized toll charges to mobile service customers should be included in Lines 413 or 414, as appropriate.
- Charges associated with customer premises equipment
  - Itemized charges for customer premises equipment should be included in Line 418.3.
- Roaming charges for service provided by foreign carriers operating in foreign points. These charges are not U.S. telecommunications revenues and therefore should be reported on Line 418.

Filers should break out Line 309/409/410 revenues as follows:

Line 309	Revenues for all mobile service provided to contributing resellers, including revenues received from another U.S carrier for roaming service, whether or not it includes toll charges, provided to customers of that carrier.

Line 409	Revenues for mobile service provided to end users, including monthly charges, activation fees, service restoration, and service order processing charges, etc. End–user prepaid wireless service revenues attributable to activation and daily or monthly access charges should be reported on Line 409.
Line 410	Revenues for mobile service provided to end users, including any roaming charges assessed on customers for calls placed out of customers' home areas and local directory assistance charges. Revenues received from a foreign carrier for roaming services provided in the U.S. to customers of that carrier. End–user prepaid wireless service revenues attributable to airtime should be reported on Line 410.

d. Toll service revenue categories

Toll services are telecommunications services, wireline, wireless, or interconnected VoIP services, that enable customers to communicate outside of local exchange calling areas. Toll service revenues include intrastate, interstate, and international long-distance services.

For wireless providers, toll services are telecommunications services that enable customers to communicate outside the customer's plan-defined home calling area.[61] The term "home calling area" is used generally by wireless carriers to denote the plan-defined area in which a subscriber may make calls and incur no additional charges beyond the plan-specific per month charge, assuming the subscriber does not exceed the plan allotted minutes.[62]

Line 411	**Prepaid Calling Cards**

Include:

- Revenues from prepaid calling cards provided either to customers, distributors, or to retail establishments.
- Prepaid service where the customer utilizes the service provider's switching platform and a personal identification number (PIN) for purposes of verification and billing, even if the customer does not receive a physical card.[63]

Gross billed revenues should represent the amounts actually paid by end user customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments. All prepaid card revenues are classified as end–user revenues. For purposes of completing this Worksheet, prepaid card revenues should be recognized when end–user customers purchase the cards.

Line 310 (Carrier's carrier) **Line 413 (End User)**	**Operator and toll calls with alternative billing arrangements**

Operator and toll calls with alternative billing arrangements should include:

- All calling card or credit card calls, person-to-person calls, and calls with alternative billing arrangements such as third–number billing, collect calls, and country-direct type calls that either originate or terminate in a U.S. point
- All charges from toll or long-distance directory assistance
- Revenues from all calls placed from all coin and coinless, public and semi-public, accommodation and prison telephones, except that:

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[61] *See Universal Service Contribution Methodology, Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligations, Petition for Declaratory Ruling of Cingular Wireless, LLC*, WC Docket No. 06-122, Declaratory Order, 23 FCC Rcd 1411, 1414, para. 5 (2008) (*Separately Stated Toll Order)*.

[62] *Id.* at 1415, para. 7, n.28.

[63] *See AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133, 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827–4827, para. 3 (2005) (*AT&T Prepaid Calling Card Services Declaratory Ruling*); *see also Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP,* WC Docket No. 06-122, Order, 25 FCC Rcd 14533, 14538–39, paras. 12–13 (Wireline Comp. Bur. 2010) (*Network IP Order*), *petition for partial reconsideration denied*, *Request for Review of a Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order on Reconsideration, 26 FCC Rcd 6169 (Wireline Comp. Bur. 2011).

- Calls that are paid for via prepaid calling cards should be included on Line 411.
- Calls paid for by coins deposited in the phone should be included on Line 407.

Line 412	**International Calls that Originate and Terminate in Foreign Points**

International calls that traverse the United States but both originate and terminate in foreign points ("traditional transiting traffic" revenues) are excluded from the universal service contribution base.

- Carrier's carrier (reseller) transit revenues should be reported on Line 311.
- End-user transit revenues should be segregated from other toll revenues by showing them on Line 412.

Telecommunications providers should only include traditional transiting revenues and should not report international settlement revenues from traditional settlement transiting traffic on the Worksheet

Line 311 (Carrier's carrier) **Line 414 (End User)**	**Ordinary Long Distance**

Filers should report ordinary long distance revenues on these lines, including:

- Revenues from most toll calls placed for a fee
- Flat monthly charges billed to customers, such as account maintenance charges, PICC pass-through charges, and monthly minimums
- Ordinary message telephone service (MTS), WATS, subscriber toll-free, 900, "WATS-like," and similar switched services
- Separately stated toll revenue from wireline, wireless, and interconnected VoIP services.[64]

Do not include:

- Revenues for the toll portion of flat rated local service (other than interconnected VoIP service), regardless of whether this portion of revenue is reported by a local exchange carrier or by its toll affiliate. Report such revenues on Line 404.2.
- Revenue for the toll portion of flat rated interconnected VoIP local service. Report such revenues on Line 404.4 or Line 404.5, as appropriate.

Ordinary long distance revenues should be reported as follows:

Line 311	Ordinary long distance and long distance using interconnected VoIP provided to contributing resellers.
Line 414.1	Ordinary long distance provided to end users using technologies other than interconnected VoIP, including toll service that employs Internet Protocol but that is not provided on an interconnected VoIP basis.[65]
Line 414.2	Separately billed revenue for ordinary long distance provided to end users using interconnected VoIP.

Line 312 (Carrier's Carrier)	**Long Distance Private Line Services**

[64] *See 2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7534, para. 29.

[65] *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*AT&T IP-in-the-Middle Order*).

Line 415 (End User)

Long distance private line service should include:

- Revenues from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area.
- Frame relay and similar services where the customer is provided a dedicated amount of capacity between points in different basic service areas.
- Revenues from the resale of business data services if they are included as part of a toll private line service.

For international private line services, U.S. providers must report on Line 415 or Line 312, as appropriate, revenues from the U.S. portion of the circuit to the theoretical midpoint of the circuit regardless of whether such revenues were billed to the customer by the reporting carrier or by a partner carrier in a foreign point.

Line 313 (Carrier's carrier) Satellite Services
Line 416 (End User)

Include:

- Revenues from providing space segment service and earth station link-up capacity used for providing telecommunications or telecommunications services via satellite.

Do not include:

- Revenues derived from the lease of bare transponder capacity.

Line 314 (Carrier's carrier) All Other Long-Distance Services
Line 417 (End User)

Include:

- All other revenues from providing long distance communications services.
- Toll teleconferencing.[66]
- Switched data, frame relay and similar services where the customer is provided a toll network service rather than dedicated capacity between two points.

[66] Audio bridging service providers should report all audio bridging revenues as telecommunications revenues. *See Intercall Order*, 23 FCC Rcd at 10734, 10739, paras. 8, 25 - 26.

e. Other revenue categories

Line 403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions

Itemized charges levied by the filer in order to recover contributions to state and federal universal service support mechanisms should be classified as end-user billed revenues and should be reported on Line 403.

- Any charge identified on a bill as recovering contributions to federal universal service support mechanisms must be shown on Line 403 and should be identified as either interstate or international revenues, as appropriate. Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, but may not be reported as intrastate revenues.
- Any charge identified on a bill as recovering contributions to state universal service support mechanisms must be shown on Line 403 and included in column (a) in the total.
- Filers should report intrastate revenues on line 403 only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills.

Line 418	Other revenues that should not be reported in the contribution bases Non-interconnected VoIP revenues (TRS only)

Line 418 should include all non-telecommunications service revenues on the filer's books, including non-telecommunications service revenues received from contributing resellers, as well as some revenues that are derived from telecommunications-related functions, but that should not be included in the universal service or other fund contribution bases. Line 418.4 should include non-interconnected VoIP revenues, which are included in the TRS contribution base only.

Line 418 includes revenues from:

- Information services.
    - Information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. For example, wireless text messaging services including Short Message Service (SMS) and Multimedia Messaging Service (MMS), voice mail, call moderation, and call transcription services are information services. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.
- The provision of broadband transmission offered on a non-common-carrier basis to providers of broadband Internet access
- The provision of broadband transmission service offered on a common-carrier basis by rate-of-return carriers that are exempt from contribution obligations on those services pursuant to Commission order
- The provision of broadband Internet access
- Published directory services
- Billing and collection services
- Inside wiring
- Inside wiring maintenance insurance

- Pole attachments
- Open video systems (OVS)
- Cable leased access
- Cable service
- Direct broadcast satellite (DBS) service
- The sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE)
- The sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE.
- Late payment charges
- Charges imposed by the filer for customer checks returned for non-payment
- Revenues from telecommunications provided in a foreign country where the traffic does not transit the United States or where the provider is offering service as a foreign carrier, i.e., a carrier licensed in that country.

Revenue reported on Line 418 should be divided into four categories:

Line 418.1	Revenues from other non-telecommunications goods or services that are bundled with U.S. wireline or wireless circuit switched exchange access services.
Line 418.2	Revenues from other non-telecommunications goods or services that are bundled with U.S. interconnected VoIP service.
Line 418.3	All other revenues properly reported on line 418 except those reported in Lines 418.1, 418.2, and 418.4, including broadband Internet access service subject to forbearance and broadband transmission service provided on a non-common carrier basis to a broadband Internet access provider.
Line 418.4	Revenues from non-interconnected VoIP services sold to end users that are not otherwise includable on Lines 403 to 417. Non-interconnected VoIP service is defined in Appendix B, under non-interconnected VoIP service provider.[67]

[67] For TRS purposes, "providers of non-interconnected VoIP services that are offered with other (non-VoIP) services that generate end-user revenues [are required] to allocate a portion of those end-user revenues to the non-interconnected VoIP service in two circumstances: (1) when those providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) when those providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price." *See 2011 TRS Contributions Order*, 26 FCC Rcd at 14538-39, para. 15. For example, a video gaming service may integrate chat functions that utilize non-interconnected VoIP services, but use of such functions may not be readily identifiable or separable from the gaming service components. *Id.* at 14538-41, paras. 15-17.

f. Reporting revenues from bundled offerings

Allocation of revenues between either wireline or interconnected VoIP telecommunications and bundled non-telecommunications, such as information services and consumer premises equipment (CPE), are governed by the Commission's bundling rules.

The Commission adopted two safe harbor methods for allocating revenue when telecommunications services and CPE/enhanced services are offered as a bundled package.

- The first option is to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services.
- Alternatively, filers may elect to treat all bundled revenues as telecommunications service revenues for purposes of determining their universal service obligations.

Filers may choose to use allocation methods other than the two described above. Filers should realize, however, that any other allocation method may not be considered reasonable and will be evaluated on a case-by-case basis in an audit or enforcement context.

Prepaid calling card providers may avail themselves of the bundled service safe harbors for separating revenue between telecommunications and information services.[68]

Similarly, providers of non-interconnected VoIP services that are offered with end-user revenue generating (non-VoIP) services may avail themselves of the bundled service safe harbors for allocating revenue.[69]

g. Notes for carriers that use the USOA

The revenue accounts in the USOA generally correspond to specific revenue lines in Block 3 and Block 4.

- For example, revenue amounts recorded in accounts 5001, 5002, 5050, 5060 and 5069 should be reported on Line 303 or Line 404, as appropriate.
- Similarly, revenues recorded in account 5280 should be reported on Line 407.

There are some exceptions.

- For example, local exchange carrier revenues from mobile carriers for calls between wireless and wireline customers should be reported on Line 304.
- Monthly and connection revenues from mobile services provided to end users in account 5004 should be reported on Line 409.
- Per-minute revenues from end users in account 5004 should be reported on Line 410. However, revenues in account 5004 from exchanging traffic with mobile service carriers should be reported on Line 304.

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[68] *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446–48, paras. 47–54 (2001); *see Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling, Report and Order, 21 FCC Rcd 7290, 7298, para. 22 (2006) (*Prepaid Calling Card Services Order*), *vacated in part, Qwest Servs. Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007).

[69] *See 2011 TRS Contributions Order*, 26 FCC Rcd at 14538-41, paras. 15-17.

- Similarly, state per-minute access revenues recorded in account 5084 should be reported on Line 304; state special access revenues recorded in account 5084 should be reported on Line 305 and Line 406, as appropriate; and state subscriber line charge revenues recorded in account 5084 should be reported on Line 405.
- Uncollectible revenue recorded in account 5300 should be reported on Line 421. The portion of these revenues that correspond to contribution base revenues should be reported on Line 422.

Revenues classified in account 5200, miscellaneous revenues, should be divided into several lines for reporting purposes.

- For example, account 5200 includes revenues derived from unbundled network elements, which should be reported on Line 303 and, reciprocal compensation, which should be reported on Line 304.
- Some types of incidental regulated revenues contained in account 5200, miscellaneous revenues, will continue to be reported on Lines 403 through 408. These include collection overages and non-refundable prepaid amounts that are not used by the customer.
- Note that late payment charges, bad check penalties imposed by the company, enhanced services, billing and collection, customer premises equipment sale, lease or insurance, and published directory revenues should continue to be reported on Line 418.

Revenues recorded in account 5100, long distance network service revenues, should be reported on Line 310 through Line 314 and Line 411 through Line 417, as appropriate.

Revenues from account 5100, long distance message revenues, are normally revenues from ordinary long distance and other switched toll services and should be reported on Lines 311, 414.1, and 414.2 except for amounts properly reported on Lines 310, 407, 411, 412, and 413.

4. ATTRIBUTING REVENUES FROM CONTRIBUTING RESELLERS AND FROM END USERS

Filers must report revenues using two broad categories: (1) revenues reported in Block 3 (revenues from contributing resellers, intercarrier compensation, and universal service support) and (2) revenues reported in Block 4 (revenues from all other sources). Taken together, these revenues should include all revenues billed to customers and should include all revenues on the filers' books of account.

Except as noted below, most categories of revenues require the filer to determine whether the customer purchasing the telecommunications is a contributing reseller or instead an end user.[70] Revenues from services provided by underlying carriers to other entities that meet the definition of "reseller" (*see* below) are referred to herein as "carrier's carrier revenues" or "revenues from resellers." Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes foreign and non-telecommunications revenues.

[70] *See 2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13786-87, para. 12; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18507 (1997) ("For this purpose, a reseller is a telecommunications service provider that 1) incorporates purchased telecommunications services into its own offerings and 2) can reasonably be expected to contribute to support universal service based on revenues from those offerings"); *Federal-State Joint Board on Universal Service; Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, Order, 24 FCC Rcd 10824, 10825-26, para. 5 (Wireline Comp. Bur. 2009) (*Global Crossing Order*).

a. Definition of "Reseller"

For purposes of completing Block 3, a "reseller" is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications into its own offerings; *and* (2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from those offerings.[71] Specifically, a customer is a reseller if it incorporates purchased wholesale service into an offering that is, at least in part, assessable telecommunications and can be reasonably expected to contribute to the federal universal service support mechanisms for that portion of the offering.[72]

b. Revenues from Entities Exempt from USF Contributions

For the purposes of filling out this Worksheet—and for calculating contributions to the universal service support mechanisms—certain telecommunications carriers and other providers of telecommunications may be exempt from contribution to the universal service support mechanisms.

- These exempt entities, including "international only" and "intrastate only" providers and providers that meet the *de minimis* universal service threshold, should not be treated as contributing resellers for the purpose of reporting revenues in Block 3.
- That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Lines 403–417 of Block 4 of the Telecommunications Reporting Worksheet, as appropriate.
    - Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.
    - In Block 5, Line 511, however, filers may elect to report the amounts of such revenues (i.e., those revenues from exempt entities that are reported as end-user revenues) so that these revenues may be excluded for purposes of calculating contributions to TRS, LNPA, and NANPA.

c. "Reasonable Expectation" Standard

Pursuant to the *2012 Wholesaler-Reseller Clarification Order*, a filer may demonstrate that it has a "reasonable expectation" that a customer contributes to federal universal service support mechanisms based on revenues from the customer's offerings by following the guidance in these instructions or by submitting other reliable proof.[73]

Filers that comply with the procedures specified in this section of the instructions will be afforded a "safe harbor"- *i.e.*, that filer will be deemed to have demonstrated a reasonable expectation. If a wholesale provider follows procedures that deviate in any way from the guidance in this section, the wholesale provider will have to demonstrate a reasonable expectation via "other reliable proof."[74] USAC shall

[71] *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13781-82, para.3.

[72] Thus, for example, if a customer purchases a DSL line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service. *See id.* at 13796, para. 34 n.98.

[73] *2012 Wholesaler-Reseller Clarification Order*, 27 FCC Rcd at 13794, para. 32, and 13801-02, paras. 51-52; *see Global Crossing Order*, 24 FCC Rcd at 1028-29, para. 14.

[74] *See id.* at 13801-02, paras. 51-52.

evaluate the use of "other reliable proof" to demonstrate a "reasonable expectation" on a case-by-case basis, based on the reasonableness of the utilized method or proof.[75]

Filers that do not comply with the safe harbor procedures or that do not otherwise meet the reasonable expectation standard will be responsible for any additional universal service assessments that result if their revenues must be reclassified as end user revenues.[76]

d. Safe Harbor Procedures for Meeting the "Reasonable Expectation."

Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that meet the definition of reseller. The procedures must include, at a minimum, the following information on resellers:

1. Filer 499 ID;[77]
2. Legal name;
3. Legal address;
4. Name of a contact person;
5. Phone number of the contact person; and,
6. As described below, an annual certification by the reseller regarding its reseller status;

Filers shall provide this information to the Commission or the Administrator upon request.

e. Certifications

Annual Certificates. A filer may demonstrate that it had and has a reasonable expectation that a particular customer is a reseller with respect to purchased service(s) by providing a certificate signed each calendar year by the customer that: [78]

> (1) specifies which services the customer is or is not purchasing for resale pursuant to the certificate;[79] and

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[75] This requirement is further discussed in the *2012 Wholesaler-Reseller Clarification Order,* 27 FCC Rcd at 13801-2, para. 52.

[76] If a wholesale provider's customer (or another entity in the downstream chain of resellers) actually contributed to the federal universal service support mechanisms for the relevant calendar year on offerings that incorporate purchased wholesale services, the wholesale provider will not be obligated to contribute on revenues for the wholesale services, even if the wholesale provider cannot demonstrate that it had a reasonable expectation that its customer would contribute when it filed its FCC Form 499-A for the relevant calendar year. *Id.* at 13799, paras. 43-44.

[77] Filer ID must be associated with an **active** 499 Filer to meet the "reasonable expectation" standard.

[78] Reseller certifications must be signed by the "customer" (*i.e.,* the resale provider itself rather than a third-party representative or consultant). *See, e.g., 2012 Wholesaler-Reseller Clarification Order*.

[79] At the filer's discretion, the filer may, for example, rely on certificates that specify any of the following: (1) that all services purchased by the customer are or will be purchased for resale pursuant to the certificate ("entity-level certification"); (2) that all services associated with a particular billing account, the account number for which the customer shall specify, are or will be purchased for resale pursuant to the certificate ("account-level certification"); (3) that individual services specified by the customer are or will be purchased for resale pursuant to certification ("service-specific certification"); or (4) that all services except those specified either individually or as associated with a particular billing account, the account number(s) for which the customer shall specify, are or will be purchased for resale pursuant to the certificate. A customer may certify that additional services will be purchased

(continued . . .)

(2) is consistent with the following sample language:

I certify under penalty of perjury that the company is purchasing service(s) for resale, at least in part, and that the company is incorporating the purchased services into its own offerings which are, at least in part, assessable U.S. telecommunications or interconnected Voice over Internet Protocol services. I also certify under penalty of perjury that the company either directly contributes or has a reasonable expectation that another entity in the downstream chain of resellers directly contributes to the federal universal service support mechanisms on the assessable portion of revenues from offerings that incorporate the purchased services.[80]

Services Purchased After Date of Annual Certificate. A filer may sell additional service(s) to a customer after the date that the annual certificate is signed. If the annual certificate does not cover those additional services, the filer may demonstrate a reasonable expectation that a customer is a reseller with respect to a service purchased after the date of the annual certificate signed by the customer by relying on either of these received prior to the filing of the applicable FCC Form 499-A:

(1) a verifiable notification from the customer that the customer is purchasing the service for resale consistent with the valid, previously signed annual certificate, or

(2) a subsequent certificate covering the purchased service signed by the customer.

5. ALLOCATING REVENUES BETWEEN THE JURISDICTIONS

Columns (b), (c), (d), and (e) are provided to identify the part of gross revenues that arise from interstate and international services for each entry on Lines 303 through 314 and Lines 403 through 417.

a. Definitions

Intrastate telecommunications means: communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia.

Interstate and international telecommunications means: communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.

b. General Requirements

Where possible, filers should report their amount of total revenues that are intrastate, interstate, and international by using information from their books of account and other internal data reporting systems.

- Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in columns (d) and (e), respectively.
    - Total revenues entered in column (a) include revenues billed for intrastate service even though intrastate revenues are not reported separately on the FCC Form 499-A.

for resale pursuant to the certificate if the customer (or another entity in the downstream chain of resellers) will contribute to the federal universal service support mechanisms on revenues attributed to such services for the relevant calendar year.

[80] In some instances, reselling carriers are themselves selling the underlying service to another (non-contributing) reseller, which then sells the same service to another (non-contributing) reseller, and so on until the service is ultimately sold to an entity that is a contributing "reseller." In these instances, an underlying carrier also may include as carrier's carrier revenue any revenues received from service ultimately provided to entities that meet the definition of "reseller" for purposes of the FCC Form 499-A.

- If the allocation of revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures.
    - In such cases, the filer should determine the good-faith estimates of the interstate and the international. revenues. Enter the interstate amount in column (d) and the international amount in column (e). Enter zero dollars in columns (d) and (e) if and only if there were no interstate or international revenues for the line for the reporting period.
    - A reporting entity may not submit a good-faith estimate lower than one percent unless the correct figure should be $0.
    - Good-faith estimates must be based on information that is current for the filing period.
    - Information supporting good-faith estimates must be made available to either the FCC or to the administrators upon request.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the per-minute revenues. Similarly, if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account.

c. Services Offered Under Interstate Tariffs

Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed LNP surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges.

d. Flat-rate Unbundled Network Access Elements

In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts.

e. Mixed-Use Private or WATS Lines

If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.[81]

f. Bundled Local and Toll Services

Many carriers and other providers of telecommunications now offer packages that bundle fixed local exchange service with interstate toll service (*i.e.*, voice long distance) for a single price.

- Revenues for the whole bundle, except for tariffed subscriber line, ARC and PICC charges, should be reported on Line 404, as described more fully above.
- The portion of revenues associated with interstate and international toll services must be identified in columns (d) and (e), respectively.[82]
- Filers should make a good-faith estimate of the amounts of intrastate, interstate, and international revenues from bundled local/toll service if they cannot otherwise determine these amounts from corporate records, and must make their methodology available to the Commission or the Administrator, upon request.

[81] *See Universal Service Order*, 12 FCC Rcd at 9173, para. 778 (citing 47 CFR § 36.154(a)).

[82] *See Separately Stated Toll Order*, 23 FCC Rcd at 1414, para. 5 (defining "toll service").

g. Safe Harbors

Wireless telecommunications providers, interconnected VoIP providers, and non-interconnected VoIP providers that choose to avail themselves of safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages.

Wireless Safe Harbor: The FCC provides the following safe harbor percentages of interstate revenues associated with Line 309, Line 409, and Line 410:[83]

37.1% of cellular and broadband PCS telecommunications revenues
12.0% of paging revenues
1.0% of analog SMR dispatch revenues

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll-service charges. All filers must report the actual amount of interstate and international revenues for these services. For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls.

Interconnected and Non-Interconnected VoIP Safe Harbor: The FCC provides the following safe harbor percentage of interstate revenues associated with Line 303.2, Line 311, Line 404.4, Line 404.5, Line 414.2, and Line 418.4:

64.9% of interconnected VoIP and non-interconnected VoIP telecommunications revenues[84]

This safe harbor percentage may not be applied to universal service pass-through charges or other fixed local service revenues.

Single Election for Affiliated Entities: All affiliated wireless telecommunications providers and VoIP providers (including interconnected and non-interconnected) must make a single election, each quarter, whether to use a traffic study or to use the current safe harbor within the same safe harbor category.[85]

- So, for example, if in a calendar quarter a wireless telecommunications provider uses a traffic study to report interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also use traffic studies to report interstate telecommunications revenues for cellular and broadband PCS offerings.

[83] *See 2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7532–33, 7545–46, paras. 25–27, 53–55; *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*2002 Second Contribution Methodology Order and FNPRM*); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258–60, paras. 11-15 (1998).

[84] *2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7545, para. 53; *2011 TRS Contributions Order*, 26 FCC Rcd at 14544, para. 25.

[85] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order and Order on Reconsideration, 18 FCC Rcd 1421, 1424-25, para. 6 (2003) ("wireless telecommunications providers are 'affiliated' for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an 'identity of interest' with another contributor"). *See also* 47 CFR § 1.2110(c)(5).

- The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services.

Same Methodology for the FCC Form 499-A and the FCC Form 499-Q: Filers should use the same methodology (traffic study or safe harbor) to report interstate and international jurisdictions on the FCC Form 499-A as used on the FCC Form 499-Qs to forecast revenue in each quarter of the applicable calendar year.

- For example, if a filer projected revenue based on a safe harbor for the first two quarters and based on traffic studies for the final two quarters, the amounts reported in the FCC Form 499-A for the first two quarters would be based on actual billings for those quarters and the relevant safe harbors, and the amounts reported for the final two quarters would be based on actual billings for those quarters and the traffic studies for those quarters.

Filers Not Required to File an FCC Form 499-Q: For filers who were not required to file the FCC Form 499-Q, the interstate and international jurisdictions reported on the FCC Form 499-A must be based on information that is current for the filing period.

h. Traffic Studies

Wireless telecommunications providers, interconnected VoIP providers, and non-interconnected VoIP providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.[86]

- In developing their traffic studies, such providers may rely on statistical sampling to estimate the proportion of minutes that are interstate and international.
- Any revenues associated with charges on customer bills that are identified as interstate or international must effectively be accounted for (e.g., through proper weighting in a traffic study) as 100 percent interstate or international when reporting revenues.[87]
- Sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample.
- Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above.
- Mobile telecommunications providers, interconnected VoIP providers and non-interconnected VoIP providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request.
- In addition, filers that rely on traffic studies must submit those studies to USAC at the time of the FCC Form 499-A filing. (S*ee* Table 3 for filing instructions – including address for filing traffic studies and filing deadlines). To enable USAC to match traffic studies filed by contributors with

[86] *See 2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7534–36, 7547, paras. 29–33, 57; *2011 TRS Contributions Order*, 26 FCC Rcd at 14544, para. 25.

[87] *See Separately Stated Toll Order*, 23 FCC Rcd at 1418, para. 15. In developing traffic studies, toll service traffic must be identified and treated in a manner that recognizes that such traffic is more likely to be interstate or international than intrastate. *See id*. Additionally, appropriate weighting of the higher revenue that is often associated with toll service must be reflected in the traffic study or studies. *See id*.

their FCC Form 499 filings, include the following identifying information at the top of each page of the traffic study: Filer ID; Company Name; Affiliated Filers Name (where applicable).

D. BLOCK 4-B: TOTAL REVENUE AND UNCOLLECTIBLE REVENUE INFORMATION

The Administrator relies on the detail line information on the Worksheet to arrive at the totals shown in Block 4-B. The Administrator will attempt to resolve conflicts between any sums that differ from the information entered into the totals on Block 4-B.

Line 419	Gross Billed Revenues from All Sources

Gross billed revenues from all sources should equal the sum of revenues by type of service reported on Lines 303 through 314 and Lines 403 through 418.

Line 420	Gross Universal Service Contribution Base Amounts

Universal service contribution base revenues should equal the subtotal of Lines 403 through 411 and Lines 413 through 417 for each column. The totals on this line represent gross end-user revenues for the purpose of determining contributions to universal service support mechanisms. *See* section IV.E (Line 511 instructions).

Line 421	Uncollectible revenue/ bad debt associated with Line 419 (Gross Billed Revenues)

Show the uncollectible revenue/bad debt expense associated with gross billed revenues amounts reported on Line 419.

- For those using billed revenues, this line may include redeemed credits.
- Reported uncollectible amounts should:
  - Be the amount reported as bad debt expense in the filer's income statement for the year.
  - Cover uncollectibles associated with all revenue on the filer's books (Line 419), including uncollectible carrier's carrier revenues, end-user telecommunications revenues, and revenues reported on Line 418.
  - Represent the portion of gross billed revenues that the filer reasonably expects will not be collected.
- Uncollectibles may not include any amounts associated with unbillable revenues.[88]
- Filers that operate on a cash basis should report $0 on this line.
- Filers that used earned revenue to represent billed revenues should not report as uncollectible any billings that are not included in earned revenues.

Filers that maintain separate detail of uncollectibles by type of business should rely on those records in dividing uncollectible expense between carrier's carrier, contribution base and other revenues, and for dividing uncollectibles associated with contribution base revenues between intrastate, interstate and international categories. Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Line 422	Uncollectible revenue/ bad debt associated with Line 420 (Universal Service Contribution Base Amounts)

[88] *See 2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24970 n.95.

Show the portion of the uncollectible revenue/bad debt expense reported on Line 421 that is associated with just the universal service contribution base amounts reported on Line 420.

- Filers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 422.
- Filers that do not have such detail should make such assignments in proportion to reported gross revenues.
- Filers must be able to document how the amounts reported on Line 422 relate to the uncollectible revenue/bad debt expense associated with gross billed revenues reported on Line 421.

In exceptional circumstances, amounts reported on Line 422 may exceed amounts reported on Line 421 or either amount might actually be negative. These situations can arise where amounts previously written off as uncollectible subsequently are collected.

Filers that maintain separate detail of uncollectibles by type of business should rely on those records in dividing uncollectible expense between carrier's carrier, contribution base and other revenues, and for dividing uncollectibles associated with contribution base revenues between intrastate, interstate and international categories. Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Line 423	**Net universal service contribution base revenues**

Net universal service contribution base revenues should equal the amounts reported on Line 420 minus the amounts reported on Line 422.

E. BLOCK 5: ADDITIONAL REVENUE BREAKOUTS FOR NON-USF MECHANISMS

Line 501	**Filer 499 ID**

Enter the Filer 499 ID from Line 101.

Line 502	**Legal Name of Filer**

Enter the legal name of the filer from Line 102.

Line 503-510	**Percentages of Telecommunications Revenues by LNPA Region**

In these lines, filers should identify the percentages of their telecommunications revenues by LNPA region.

- Payphone service providers, private service providers, and shared-tenant service providers that have certified that they are exempt from contributing to the shared costs of LNP need not provide these breakdowns.

Carriers and interconnected VoIP providers should calculate or estimate the percentage of revenues that they billed in each region based on the amount of service they actually provided in the parts of the United States listed for each region.

- Customer billing addresses may be used to calculate or estimate this percentage.
- The percentages in column (a), representing Block 3 revenues billed in each region of the country, should add to 100% unless the filer did not provide any services for resale by other contributors to the federal universal service support mechanisms.

- The percentages in column (b), representing Block 4 telecommunications service revenues billed in each region of the country (excluding non-telecommunications revenues reported on Line 418) should add to 100% unless the filer did not provide any telecommunications services to end users or non-contributing carriers.
- Filers may use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA.

Line 511	Revenues from Resellers that Do Not Contribute to Universal Service Support Mechanisms and Are Included in Block 4

Identify revenues from resellers that do not contribute directly to universal service support mechanisms and that are included in Block 4. Revenues from resellers that do not contribute to universal service support mechanisms are included on Line 420 but may be excluded from a filer's TRS, NANPA, LNP, and FCC interstate telephone service provider regulatory fee contribution bases. To have these amounts excluded, the filer has the option of identifying such revenues on Line 511.

Line 420 may contain revenues from some FCC Form 499 filers that are exempt from contributing directly to universal service support mechanisms. For example, these would include filers that meet the universal service *de minimis* exception or that provide "international only" service. Since these universal service exempt entities generally do contribute directly to the TRS, LNP, and NANPA mechanisms, revenues from these entities need not be included in the underlying service provider contribution bases for those mechanisms. Filers choosing to report revenues on Line 511 must have the FCC Filer 499 ID for each customer whose revenues are so reported.

Line 512	Gross TRS Contribution Base Amounts

TRS contribution base revenues reportable on Line 512(a) should equal the subtotal of Lines 403(a) through 417(a) and Line 418.4(a) less Line 511(a).

TRS contribution base revenues reportable on Line 512(b) should equal the subtotal of Lines 403(d) through 417(d), Lines 403(e) through 417(e), Line 418.4(d), and Line 418.4(e) less Line 511(b). The totals on this line represent gross end-user revenues for the purpose of determining contributions to TRS.

Line 513	Uncollectible Revenue/ Bad Debt Expense Associated with TRS Contribution Base Amounts

Show the portion of the uncollectible revenue/bad debt expense reported on Line 421 that is associated with just the TRS contribution base amounts reported on Line 512.

- Filers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 513.
- Filers that do not have such detail should make such assignments in proportion to reported gross revenues.

Filers must be able to document how the amounts reported on Line 513 relate to the uncollectible revenue/bad debt expense associated with gross billed revenues reported on Line 421.

- In exceptional circumstances, amounts reported on Line 513 may exceed amounts reported on Line 421 or either amount might actually be negative. These situations can arise where amounts previously written off as uncollectible subsequently are collected.

Line 514	Net TRS Contribution Base Revenues

Net TRS contribution base revenues should equal the amounts reported on Line 512 less the amounts reported on Line 513.

F. BLOCK 6: CERTIFICATION

Line 601	Filer 499 ID

Copy the Filer 499 ID from Line 101.

Line 602	Legal Name of Filer

Copy the legal name of the filer from Line 102.

Line 603	Certifications – Exemptions from Contribution Requirement(s)

In this line, filers may certify that they are exempt from one or more contribution requirement(s) by checking the box next to the mechanism(s) from which they are exempt.

- As explained above, the FCC Form 499 Telecommunications Reporting Worksheet enables telecommunications carriers and service providers to satisfy a number of requirements in one consolidated form.
- Not all entities that file the Telecommunications Reporting Worksheet must contribute to all of the support and cost-recovery mechanisms (universal service, LNP, TRS, and NANPA). For example, certain telecommunications providers that are not telecommunications carriers must contribute to the universal service support mechanisms, but not to the TRS, LNP, and NANPA mechanisms.
- Section III.A provides summary information on which filers must contribute and which filers are exempt from particular contribution requirements.

Filers that certify that they are exempt from one or more mechanism(s) should use the space provided on Line 603 to explain the exemption.

Note: It is not necessary for a filer to certify that it is *de minimis* for universal service purposes because the universal service administrator can determine whether a filer meets the contribution threshold from other information provided on the form. If, however, a reseller or other provider of telecommunications qualifies for the *de minimis* exemption, it must notify its underlying carriers that it is not contributing directly to universal service. Such a reseller or other provider of telecommunication must be treated as an end user when the underlying carrier(s) file an FCC Form 499.

Line 604	Regulatory Fee Exemptions

In this line, filers indicate whether they are exempt from FCC regulatory fees or the filer is an "exempt telecommunications company."[89]

- A state or local governmental entity is any state, possession, city, county, town, village, municipal corporation, or similar political organization.[90]

[89] 47 CFR § 1.1162(c). The FCC will presume that otherwise exempt carriers prefer to pay FCC regulatory fees unless they check this box.

[90] 47 CFR § 1.1162(b).

- The second check box identifies organizations duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. § 501 or by state certification.[91] These organizations typically qualify for non-profit status under sections 501(c)(3) or 501(c)(12).

Note that such entities are not exempt from universal service, TRS, LNP, or NANPA contributions unless they qualify under some other exemption (i.e., Interstate service providers that have mobile service or satellite service revenues but that do not have interstate local revenues or interstate toll revenues are exempt from payment of ITSP fees. Interstate service providers that provide service to only other carriers are also exempt from ITSP regulatory fees. Carriers whose total regulatory fee payment obligation is $1,000 or less are also exempt).

Line 605	Request for Nondisclosure of Revenue Information

Filers may use the box in Line 605 to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet.

- By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet.
- This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's rules.[92]

All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2-B contact information) of the entities that file the Telecommunications Reporting Worksheet and information on which filers contribute to which funding mechanisms, including entities that checked the boxes in Line 603.

Line 606-611	Officer Certification

An officer of the filer must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and complete.

- Officers of entities making consolidated filings should refer to Section III.B and must certify that they comply with the conditions listed in that section.
- An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement. Preferably, the signing officer would be a vice-president for finance, comptroller, treasurer, or a comparable officer holding a financial position. Alternatively, the officer signing the Form preferably would be the president or vice president of operations. If the filer is a sole proprietorship, the owner must sign the certification.

Capable filers must enter data, and verify, submit, and certify FCC Forms 499-A and 499-Q online via USAC's web-based data entry system, E-File.

- An electronic signature in the signature block of each form certified by that officer will be considered the equivalent to a handwritten signature on the form.

[91] 47 CFR § 1.1162(c).

[92] 47 CFR § 0.459; *see Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

- By entering his or her electronic signature into the signature block of each form, the officer, therefore, acknowledges that such electronic signature certifies his or her identity and attests under penalty of perjury as to the truth and accuracy of the information contained in each electronically signed form.
- Visit https://www.usac.org/service-providers/contributing-to-the-usf/forms-to-file/ for more information and access to the online filing system.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under Title 18 of the United States Code.[93]

Line 612	Type of Filing

Indicate whether this filing is an original filing for the year, due on April 1, a registration filing for a new service provider, a filing with revised registration information, or a filing with revised revenue information. *See* section III.D for information on the obligation to file revisions.

V. CALCULATION OF CONTRIBUTIONS

Filers do not calculate the amounts that they must contribute in this Worksheet. The administrators will use the revenue information on the Worksheet to calculate a funding base and individual contributions for each support mechanism. Individual contributions are determined by the use of "factors"—factors reflect the total funding requirement of a particular mechanism divided by the total contribution base for that mechanism. Information on the contribution bases and individual filer contributions are shown below in Table 4.

Table 4: Contribution Bases

Support Mechanism	Funding Basis
Universal service	Line 423(d) + Line 423(e)* less revenues corresponding to universal service contributions**
TRS (Filers with end-user revenues must pay a minimum of $25)	Line 514(a) for contributions funding IP CTS,[94] IP Relay,[95] and VRS.[96] Line 514(b) for contributions funding all other forms of TRS
NANPA (Filers with end-user revenues must pay a minimum of $25. Filers with no end-user revenues must pay $25.)	Line 420(a) plus Line 412(a) less Line 511(a)
LNPA - by region (Filers with only carrier's carrier revenue in a region must pay $100 for that region)	Line 420(a) plus Line 412(a) less Line 511(a) times percentages on Lines 503 through 509

[93] *See* 18 U.S.C. § 1001.

[94] *See* 47 CFR 64.601(a)(~~19~~22).

[95] *See* 47 CFR 64.601(a)(23).

[96] *See* 47 CFR 64.601(a)(50).

* Line 423(e) is excluded from the contribution base if the total of amounts on Line 423(d) for the filer consolidated with all affiliates is less than 12% of the total of Line 423(d) + Line 423(e) for the filer consolidated with all affiliates. *See* 47 CFR § 54.706(c).

** The contribution base for an individual filer is the projected collected interstate and international revenues for the quarter, reduced by an imputed amount of universal service support pass-through charges, based on the actual factor for the quarter. *See Contribution Methodology Order*, 17 FCC Rcd 24952; *see, e.g.*, Proposed First Quarter 2004 Universal Service Contribution Factor, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 25111 (2003). *See also* FCC, Contribution Factor & Quarterly Filings - Universal Service Fund (USF) Management Support, https://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support.

Monthly billings for universal service are based on projected collected revenue information filed on the quarterly FCC Form 499-Q.

- Historical amounts reported on FCC Form 499-Q Line 116(b) and (c) correspond to FCC Form 499-A Line 420(d) and (e), respectively.
- Projected collected revenues on FCC Form 499-Q Line 120(b) and (c) correspond to net universal service base revenues on FCC Form 499-A Line 423(d) and (e), respectively.
- The FCC Form 499-Q provides instructions for projecting revenues, and for removing uncollectible amounts from billed revenue projections.
- The amounts filed on the FCC Form 499-A are used to review and true-up FCC Form 499-Q filings and associated contributions.

VI. ADDITIONAL INFORMATION

A. REMINDERS

- File the FCC Form 499-A online at https://forms.universalservice.org.
- Contributors are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for five years. *See* section III.E.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. *See* section III.B. Each affiliate or subsidiary must show the same Affiliated Filers information on Lines 106.1 and 106.2.
- Provide data for all lines that apply. Show a zero for services for which the filer had no revenues for the filing period.
- Be sure to include on Line 112 all names by which the filer is known to customers, including the names of agents or billers if those names appear on customer bills.
- Telecommunications providers that are required to contribute to universal service support mechanisms must also file quarterly FCC Forms 499-Q. *See* section III.C.
- Wherever possible, revenue information should be taken from the filer's financial records.
- The Worksheet must be signed by an officer of the filer. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* section III.C.

- Filers must re-file parts of the Worksheet if the Agent for Service of Process or FCC Registration information changes during the year.

FCC Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the Commission's web site, at https://www.fcc.gov/reports-research/guides/common-carrier-filing-requirements-information-firms-providing-telecommunications-services.

B. PAPERWORK REDUCTION ACT NOTICE

Section 52.17 of the Federal Communications Commission's rules require all telecommunications carriers and interconnected VoIP providers to contribute to meet the costs of establishing numbering administration, and directs that contributions shall be calculated and paid in accordance with the FCC Form 499-A or Worksheet. 47 CFR § 52.17. Section 52.32 requires the local number portability administrators shall recover the shared costs of long-term number portability from all telecommunications carriers and interconnected VoIP providers. 47 CFR § 52.32. Sections 54.706, 54.711, and 54.713 require all interstate telecommunications carriers, interconnected VoIP providers, providers that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Worksheet once a year and the FCC Form 499-Q four times a year. 47 CFR §§ 54.706, 54.711, 54.713. Section 64.604 requires that every common carrier, interconnected VoIP provider, and non-interconnected VoIP provider contribute to the TRS Fund on the basis of its relative share of end-user revenues that are subject to contributions based on information provided in this Worksheet. 47 CFR §§ 64.601(b), 64.604(c)(5)(iii)(A) and (B). Section 64.1195 and the Commission's orders require all telecommunications carriers and interconnected VoIP providers to register using the FCC Form 499-A. 47 CFR § 64.1195(a).

This collection of information stems from the Commission's authority under sections 151(i), 225, 251, 254, 258, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(i), 225, 251, 254, 258, 616. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms, the TRS support mechanism, the cost recovery mechanism for numbering administration, and the cost recovery mechanism for shared costs of long-term number portability. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 13.5 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, you may write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to pra@fcc.gov. DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS.

You are not required to respond to a collection of information sponsored by the federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act to collect the information we request on this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative

body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of rules 1.47, 52.17, 52.32, 54.713, 64.604, and 64.1195. 47 CFR §§ 1.47, 52.17, 52.32, 54.713, 64.604, 64.1195.

The foregoing notice is required by the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq*.

Appendix A

How to determine if a filer met the universal service *de minimis* standard for calendar year 2023~~2~~

(1)	*Interstate contribution base for filer* Enter Line 423(d) from FCC Form 499-A.	$
(2)	*International contribution base for filer* Enter Line 423(e) from FCC Form 499-A.	$
(3)	*Interstate contribution base for all affiliates* ***** Enter sum of Line 423(d) from FCC Forms 499-A of all affiliates.	$
(4)	*International contribution base for all affiliates* Enter sum of Line 423(e) from FCC Forms 499-A of all affiliates.	$
(5)	*Consolidated interstate contribution base* Enter Line (1) + Line (3).	$
(6)	*Consolidated interstate and international contribution base* Enter Line (2) + Line (4) + Line (5).	$
(7)	*Consolidated interstate contribution base as a percentage of consolidated interstate and international contribution base* Enter Line (5) / Line (6).	%
(8)	*LIRE Exemption* ****** If Line (7) > 12%, enter Line (2). If Line (7) ≤ 12%, enter $0.	$
(9)	*Contribution base to determine de minimis qualification* Enter Line (1) + Line (8).	$
(10)	*2024~~3~~ Form 499-A de minimis estimation factor*	0.~~259~~XXX ***
(11)	*Estimated annual contribution* Enter Line (9) x Line (10)	$

***** Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For this purpose, the term "owns" means to own an equity interest (or the equivalent thereof) of more than 10 percent. *See* 47 U.S.C. § 153(2).

****** Line 423(e) is excluded from the contribution base if the total of amounts on Line 423(d) for the filer consolidated with all affiliates is less than 12% of the total of Line 423(d) + Line 423(e) for the filer consolidated with all affiliates. *See* 47 CFR § 54.706(c).

******* The estimation factor is based on a contribution factor of 0.~~349~~XXX, which is higher than the contribution factor announced for any quarter of 202~~1~~, and a corresponding circularity factor of 0.~~257634~~XXXXXX. Actual contribution and circularity factors for calendar year ~~2022~~ 2023 may have increased or decreased depending on quarterly changes in program costs and the projected contribution base. Using the estimation factor, filers whose actual contribution requirements total less than $10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total $10,000 or more are required to contribute directly to the universal service support mechanisms. Note that telecommunications carriers and interconnected VoIP service providers must file this Worksheet regardless of whether they qualify for the *de minimis* exemption. Telecommunications providers may qualify for one of the exemptions to filing as detailed in Sections II.A.2.

Appendix B

Explanation of categories listed in Line 105

CAP/CLEC (Competitive Access Provider/Competitive Local Exchange Carrier). — Competes with incumbent local exchange carriers (ILECs) to provide local exchange services, or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers, other than Coaxial Cable providers.

Cellular/PCS/SMR (Cellular, Personal Communications Service, and Specialized Mobile Radio). — Provides primarily wireless telecommunications services (wireless telephony). This category includes all providers of real-time two-way or push-to-talk switched voice services that interconnect with the public switched network, including providers of prepaid phones and public coast stations interconnected with the public switched network. *See* 47 CFR § 80.451. This category includes the provision of wireless telephony by resale. An SMR provider would select this category if it primarily provides wireless telephony rather than dispatch or other mobile services.

Coaxial Cable. — Uses coaxial cable (cable TV) facilities to provide local exchange services or telecommunications services that link customers with interexchange facilities, local exchange networks, or other customers.

ILEC (Incumbent Local Exchange Carrier). — Provides local exchange service. An incumbent LEC or ILEC generally is a carrier that was at one time franchised as a monopoly service provider or has since been found to be an incumbent LEC. *See* 47 U.S.C. § 251(h).

IXC (Interexchange Carrier). — Provides long distance telecommunications services substantially through switches or circuits that it owns or leases.

Interconnected VoIP Provider. — Provides "interconnected VoIP service," which is a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Local Reseller. — Provides local exchange or fixed telecommunications services by reselling services of other carriers.

Non-Interconnected VoIP Provider. — Provides non-interconnected VoIP service, which is a service that (i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol and (ii) requires Internet protocol compatible customer premises equipment, but (iii) is not an interconnected VoIP service.

Operator Service Provider (OSP). — Serves customers needing the assistance of an operator to complete calls or needing alternate billing arrangements such as collect calling.

Paging — Provides wireless paging or wireless services. This category includes the provision of paging services by resale.

Payphone Service Provider. — Provides customers access to telephone networks through payphone equipment, special teleconference rooms, etc. Payphone service providers also are referred to as payphone aggregators.

Prepaid Calling Card Provider. — Provides prepaid calling card services by selling prepaid calling cards to the public, to distributors or to retailers. Prepaid card providers provide consumers the ability to place long distance calls without presubscribing to an interexchange carrier or using a credit card. Prepaid card providers typically resell the toll service of other carriers and determine the price of the

service by setting the price of the card, assigning personal identification numbers (PINs) and controlling the number of minutes that the card can be used for. Companies who simply sell cards created by others are marketing agents and do not file.

Private Service Provider. — Offers telecommunications to others for a fee on a non-common carrier basis. This would include a company that offers excess capacity on a private system that it uses primarily for internal purposes. This category does not include SMR or Satellite Service Providers.

Satellite Service Provider. — Provides satellite space segment or earth stations that are used for telecommunications service.

Shared-Tenant Service Provider /Building LEC. — Manages or owns a multi-tenant location that provides telecommunications services or facilities to the tenants for a fee.

SMR (dispatch) (Specialized Mobile Radio Service Provider). — Primarily provides dispatch services and mobile services other than wireless telephony. While dispatch services may include interconnection with the public switched network, this category does not include carriers that primarily offer wireless telephony. This category includes LTR dispatch or community repeater systems.

Stand-Alone Audio Bridging Provider /Integrated Teleconferencing Service Provider. — Allows end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge), without change in the form or content of the information as sent and received (voice transmission).

Toll Reseller. — Provides long distance telecommunications services primarily by reselling the long distance telecommunications services of other carriers.

Wireless Data. — Provides mobile or fixed wireless data services using wireless technology. This category includes the provision of wireless data services by resale.

The Worksheet also provides boxes for "Other Local," "Other Mobile," and "Other Toll." If one of these categories is checked, the filer should describe the nature of the service it provides under the check boxes. For example, filers that provide toll service that: (1) uses ordinary customer premises equipment with no enhanced functionality; (2) originates and terminates on the public switched telephone network and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology should enter "VoIP toll" in the explanation field.[97]

Appendix C – Definitions for International Reporting

Country-Beyond Service is an International Calling Service (ICS) provided and billed by a U.S. International Service Provider to a customer located in a foreign point in which case the customer, using a credit card or calling card issued by the U.S. International Service Provider, calls a telephone number in another foreign point.

Country-Direct Service is ICS provided by a U.S. International Service Provider to a customer located in a foreign point in which case the customer, using a credit card or calling card issued by the U.S. International Service Provider, calls a telephone number in the United States.

Foreign-Billed (ICS) refers to ICS that originates or terminates with an end-user in the United States, and that is billed by a Foreign Service Provider.

Foreign Carrier refers to any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of

[97] *See AT&T IP-in-the-Middle Order*, 19 FCC Rcd 7457.

the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country. The term "Foreign Carrier" does not refer to the nationality of the employees or owners of a communications entity. An affiliate of a Foreign Carrier that operates in the United States as a common carrier is a U.S. Carrier.

Foreign Service Provider refers to a Foreign Carrier; or any person or entity in a foreign point that provides VoIP service connected to the PSTN in a foreign point or between a foreign point and the United States; or any person or entity in a foreign point that provides International Call Completion Service to a U.S. International Service Provider or obtains International Call Completion Service from a U.S. International Service Provider.

International Calling Service (ICS) refers to International Message Telephone Service (IMTS) and International VoIP Service Connected to the PSTN, including International Call Completion Service for IMTS or International VoIP Service Connected to the PSTN.

International VoIP Service Connected to the PSTN refers to service between the United States and any foreign point that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet Protocol-compatible customer premise equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) or to terminate calls to the PSTN. International VoIP Service Connected to the PSTN consists of Interconnected VoIP Service and "one-way" VoIP services, between the United States and any foreign point. (One-way VoIP services enable users to terminate calls to the PSTN but do not permit users to receive calls that originate on the PSTN, or enable users to receive calls from the PSTN but do not permit the user to make calls terminating to the PSTN.) International Call Completion Service for International VoIP Service Connected to the PSTN is included within the definition of International VoIP Service Connected to the PSTN.

Re-originated Foreign ICS refers to ICS traffic from a foreign point that is transmitted to the United States for retransmission to a destination foreign point, but that is not handled as Traditional Transiting ICS.

Settlement Payout refers to the expense (including any transiting fees) that a U.S. International Service Provider incurs for International Call Completion Service to a foreign point obtained from a Foreign Service Provider.

Settlement Receipt refers to the revenue that a U.S. International Service Provider bills for International Call Completion Service to the United States provided to a Foreign Service Provider.

Traditional Transiting ICS refers to ICS from a foreign point that (a) transits the United States prior to completion at a foreign point and (b) is settled at a rate agreed upon by the Foreign Service Provider in the origination foreign point and the Foreign Service Provider in the destination foreign point. The U.S. International Service Provider that provides the transiting service is reimbursed for its handling and transmission of the traffic by the Foreign Service Provider in the origination foreign point.

U.S.-Billed Facilities ICS refers to U.S.-Billed ICS that a U.S. International Service Provider provides as Facilities ICS.

U.S.-Billed ICS refers to an ICS call that originates or terminates in the United States and that is billed by a U.S. International Service Provider to an end-user customer or to a U.S. International Service Provider that is taking the service for resale; or a Reorginated Foreign ICS call that is billed by a U.S. International Service Provider to a Foreign Service Provider; or a country-beyond call.

FCC Form 499-Q Telecommunications Reporting Worksheet Approval by OMB
Quarterly Filing for Universal Service Contributors > Please read instructions before completing < 3060-0855

Block 1: Contributor Identification Information		**101** Filer 499 ID	
102 Legal name of reporting entity			
103 Filer's IRS employer identification number			
104 Name telecommunications provider is doing business as			
105 Affiliated Filers Name [All affiliated companies should show same name here. In most cases, the Affiliated Filers Name will be the holding company name		Check if filer has no affiliates: ☐	
105.1 Affiliate Filers Name IRS employer identification number		[Enter 9 digit number]	
106 Filer's FCC Registration Number (FRN)		[Enter 10 digit number]	
107 Complete mailing address of reporting entity's corporate headquarters			

Block 2: Contact Information			
108 Person who completed this worksheet	First	MI	Last
109 Telephone number of this person	( ) -		
110 Fax number of this person	( ) -		
111 Email of this person			
112 Billing address and billing contact person: [Bills for Universal Service contributions will be sent to this address.]			

Block 3: Contributor Historical and Projected Revenue Information

113 Indicate which quarterly filing this represents

Filing due	**Historical revenues (lines 115-118) for**	**Projected revenues (lines 119-120) for**
☐ November 1, 2023~~2~~	July 1 – September 30, 2023~~2~~	January 1 – March 31, 2024~~3~~
☐ February 1, 2024~~3~~	October 1 – December 31, 2023~~2~~	April 1 – June 30, 2024~~3~~
☐ May 1, 2024~~3~~	January 1 – March 31, 2024~~3~~	July 1 – September 30, 2024~~3~~
☐ August 1, 2024~~3~~	April 1 – June 30, 2024~~3~~	October 1 – December 31, 2024~~3~~

114 Check if using safe harbor to allocate interstate/intrastate revenues for each of the following (as applicable):
Cellular & broadband PCS: ☐ Paging: ☐ Analog SMR: ☐ Interconnected VoIP: ☐

Historical billed revenues with no allowance or deductions for uncollectibles. See Instructions.		Total Revenues (a)	Interstate Revenues (b)	International Revenues (c)
115	Telecommunications provided to other universal service contributors for resale as telecommunications or as interconnected VoIP			
116	End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues			
117	All other goods and services		Column (b) and (c) not requested for Lines 117 and 118	
118	Gross-billed revenues from all sources [sum of above]			
119	Projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues			
120	Projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues			

Block 4: CERTIFICATION: to be signed by an officer of the reporting entity

121 I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules. ☐

I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true, that said Worksheet is an accurate statement of the affairs of the above-named company for the quarter and that the projections of gross-billed and collected revenues represent a good-faith estimate based on company procedures and policies.

122 Signature			
123 Printed name of officer	First	MI	Last
124 Position with reporting entity			
125 Email of officer (Required if available)			
126 Date			
127 This filing is:	☐ Original filing	☐ Revised filing [revisions due within 45 days of original filing deadline]	

File this form online https://forms.universalservice.org/portal/login
For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (888)641-8722 or via email: Form 499@usac.org

PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

Save time, avoid problems – file electronically at http://forms.universalservice.org FCC Form 499-Q / 202~~3~~

Telecommunications Reporting Worksheet, FCC Form 499-Q 202~~2~~3)
Instructions for Completing the Quarterly
Worksheet for Filing Contributions
to Universal Service Support Mechanisms

* * * * *

NOTICE: Sections 54.706, 54.711, and 54.713 of the Federal Communications Commission's rules require all telecommunications carriers providing interstate telecommunications services, interconnected voice-over-Internet-protocol (VoIP) providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Telecommunications Reporting Worksheet (FCC Form 499-Q or Worksheet) on February 1, May 1, August 1, and November 1, each year. 47 CFR §§ 54.706, 54.711, 54.713. This collection of information stems from the Commission's authority under Sections 151(i) and 254 of the Communications Act of 1934, as amended (Communications Act or Act), 47 U.S.C. §§ 151(i), 254. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 10.0 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, project growth or decline in revenues, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, you may write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to PRA@FCC.gov. DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS.

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department of Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of sections 1.47, 52.17, 52.32, 54.713, and 64.604 of the Commission's rules. 47 CFR §§ 1.47, 52.17, 52.32, 54.713, and 64.604.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. §§ 3501, *et seq*.

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File FCC Form 499-Q online. http://forms.universalservice.org.

I. Introduction

As required under the Communications Act of 1934, as amended,[1] the Commission has established procedures to finance universal service support mechanisms. To accomplish this Congressionally-directed objective, contributions are collected from telecommunications carriers providing interstate telecommunications and certain other providers of interstate telecommunications (including interconnected VoIP providers). This Worksheet sets forth information that the contributor must submit, so that the administrator of the universal service support mechanisms may calculate and assess contributions.[2]

II. Filing Requirements and General Instructions

A. Who Must File

All providers of interstate telecommunications within the United States,[3] with very limited exceptions, must file an FCC Form 499-Q Telecommunications Reporting Worksheet.[4]

For purposes of determining whether an entity provides telecommunications, the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging services; dispatch services; mobile radio services;[5] operator services; access to interexchange service; business data services; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; resale services; frame relay, asynchronous transfer mode (ATM) and Multi-Protocol Label Switching

[1] 47 U.S.C. §§ 151 *et seq*.

[2] On March 9, 2001, the Commission modified its rules to base universal service contributions on information reported on quarterly Telecommunications Reporting Worksheet filings, with an annual true-up based on information reported on annual Telecommunications Reporting Worksheets. *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) (*Quarterly Reporting Order*); *see also 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602 (1999) (*Consolidated Reporting Order*).

[3] For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

[4] Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications *services*" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). For more information on these terms, s*ee* 47 U.S.C. §§ 153(50), (51); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*); *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Contribution Methodology Reform Order*).

[5] *See Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, WC Docket No. 06-122, Order, 23 FCC Rcd 12836 (Wireline Comp. Bur. 2008).

(MPLS); audio bridging services;[6] and interconnected VoIP services.[7] Note, for example, that all incumbent and competitive local exchange carriers provide access to an interstate public network and, therefore, provide interstate telecommunications. There are no exemptions for data or non-voice services.

Note also that entities must file this Worksheet, and are subject to universal service contribution requirements, if they offer interstate telecommunications for a fee to the public even if only a narrow or limited class of users could utilize the services. Included are entities that provide interstate telecommunications to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," and interconnected VoIP providers must file this Worksheet if they do not qualify for the *de minimis* exemption under the Commission's universal service rules.

Marketing agents (i.e., entities that market services on behalf of a telecommunications provider) are not themselves telecommunications providers and are not required to file this Worksheet. The amounts remitted to or retained by the marketing agent are treated as expenses of the underlying provider and may not be deducted from underlying carrier revenues. A reseller is not a marketing agent.

The following three sections list types of telecommunications providers that are not required to file the FCC Form 499-Q. Note that such entities are treated as end users by their underlying carriers and therefore may be subject to pass-through charges.

1. Universal service exemption for *de minimis* telecommunications providers

Section 54.708 of the Commission's rules states that telecommunications carriers and telecommunications providers are not required to contribute directly to the universal service support mechanisms for a given year if their contribution for that year is less than $10,000.[8] Thus, potential contributors whose contribution to the universal service support mechanisms would be *de minimis* under the universal service rules are not required to file the Worksheet (FCC Form 499-Q) or contribute directly to universal service. Telecommunications carriers and other telecommunications providers should complete the table contained in Figure 1 to determine whether they meet the *de minimis* standard. To complete Figure 1, potential filers and all affiliates must first complete block 3 of the Worksheet and enter the amounts from Line 120(b) and 120(c) in Figure 1.

Telecommunications providers that do not file this Worksheet because they are *de minimis* for purposes of universal service contributions (and need not file for any other purpose) should retain Figure 1 and documentation of their contribution base revenues nonetheless for five years and may be required to provide it to the FCC, the FCC's Data Collection Agent or the Universal Service Administrative Company (USAC) upon request.[9]

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[6] *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731, 10737-38, para. 22 (2008), *petition for reconsideration denied*, *Petitions for Reconsideration and Clarification of the InterCall Order*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, 28 FCC Rcd 898 (2012), *subsequent history omitted.*

[7] *See* 47 CFR § 9.3 (defining interconnected VoIP service).

[8] 47 CFR § 54.708.

[9] *See Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16386-87, para. 27 (2007) (codified at 47 CFR § 54.706(e)) (*USF Comprehensive Review Order*).

Figure 1
Table to determine if a contributor meets the *de minimis* standard for purposes of universal service contribution during 2024~~3~~

1	Interstate contribution base for the quarter for filer (amount reportable on filer's FCC Form 499-Q; Line 120(b))	$
2	International contribution base for the quarter for filer (amount reportable on filer's FCC Form 499-Q; Line 120(c))	$
3	Interstate contribution base for the quarter for all affiliates* (total of amounts reportable on FCC Form 499-Q; Line 120(b) for all affiliates of the filer)	$
4	International contribution base for the quarter for all affiliates (total of amounts reportable on FCC Form 499-Q; Line 120(c) for all affiliates of the filer)	$
5	Consolidated interstate contribution base: Line (1) + Line (3)	$
6	Consolidated international contribution base: Line (2) + Line (4)	$
7	Total potential contribution base for filer and its affiliates: Line (5) + Line (6)	$
8	Combined interstate contribution base as a percentage of total potential contribution base: Line (5) / Line (7)	%
9	Interstate contribution base for filer from Line (1)	$
10	If the amount in Line (8) is equal to or greater than 12%, enter into Line (10) the international contribution base for the filer from Line (2). If the amount on Line (8) is less than 12%, enter $0 (*See* 47 CFR § 54.706(c))	$
11	Revenue base for the filer for the quarter for determining contributions to universal service support mechanisms: Line (9) + Line (10)	$
12	If the projected revenues on Lines (1) and (2) include projected pass-through charges for contributions to federal universal service support mechanisms, enter the total amount of projected pass-through charges. If the projected revenues on Lines (1) and (2) do not include any universal service pass-through charges, enter $0.	$
13	Contribution base; Line (11) – Line (12)	$
14	Annualizing multiplier	4
15	Annualized contribution base; Line (13) multiplied by Line (14)	
16	2024~~3~~ Estimation factor for determining whether to file a 499-Q	0.~~256~~ XXX **
17	Estimated annual contribution: amount in Line (15) multiplied by Line (16)	$

* Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." For this purpose, the term 'owns' means to own an equity interest (or the equivalent thereof) of more than 10 percent. *See* 47 U.S.C. § 153(2).

** The estimation factor is based on a contribution factor of 0.~~344~~XXX, which is higher than the contribution factor announced for any quarter of 2023~~2~~, and a corresponding circularity factor of 0.~~255341~~XXXXXX. The public notices announcing the quarterly contribution factors are available at http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support.

Note: Actual contribution factors for future quarters may increase or decrease depending on quarterly changes in program costs and the contribution base. Filers whose actual contribution requirements total less than $10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total $10,000 or more are required to contribute to the universal service support mechanisms and must file this Worksheet.

2. Exception for government, broadcasters, schools, and libraries

Certain entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves, *e.g.*, state networks for schools and libraries, are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to file or contribute directly to universal service. In addition, broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers are not required to file the Worksheet or contribute directly to universal service. As explained above, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of pass-through charges.

3. Exception for systems integrators and self-providers

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators are providers of integrated packages of services and products that may include the provision of computer capabilities, interstate telecommunications services, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision of telecommunications and computer equipment, equipment maintenance, help desk functions, and other services and products. Legal entities that provide services only to themselves or to commonly-owned affiliates need not file.

B. Filing by Legal Entity

Each legal entity that provides interstate telecommunications service for a fee, or that provides interstate interconnected VoIP service, including each affiliate or subsidiary of an entity, must complete separately and file a copy of the attached Telecommunications Reporting Worksheet, except as provided for below. Entities that have distinct articles of incorporation, articles of formation or similar legal documents are separate legal entities. Each affiliate or subsidiary should identify their ultimate controlling parent or entity on Block 1 Line 105 – Affiliated Filers Name.

Consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:[10]

(1) A single entity oversees the management of the affiliated systems;

(2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;

(3) All revenues are posted to a single general ledger;[11]

(4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;

(5) Customers have a single point of contact;

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[10] *Federal-State Joint Board on Universal Service et al*, CC Docket No. 96-45 *et al.*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002) (2002 *First Contribution Methodology Order and FNPRM*).

[11] The FCC Form 499 Filings for the consolidated filer must reflect all revenues in this general ledger.

(6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;

(7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;[12]

(8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;

(9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and

(10) The consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.[13]

Each year, entities choosing to file on a consolidated basis must file a statement with the Commission's Data Collection Agent certifying that they meet all of the above conditions.[14] Such certification also must include: (1) a list of the legal names of all legal entities that are covered by the filing; (2) the FCC Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FRN; and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent (*see* address in Figure 2). Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

C. When and Where to File

Filers are required to file this form electronically, effective April 1, 2015. Figure 2 provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in Section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day. There is no fee to file this form.

[12] A Commercial Mobile Radio Service (CMRS) carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filing entity or any of its affiliated legal entities that also are not subject to the slamming regulations.

[13] For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

[14] *See* address in Figure 2 (Filing Schedule).

Figure 2: Filing schedule

What to file	When to file	Where to file **
Completed FCC Form 499-A	April 1	http://forms.universalservice.org
Completed FCC Form 499-Q (universal service contributors only) *	February 1 May 1 August 1 November 1	http://forms.universalservice.org
Consolidated filer certification *See* section II.B for format and content requirements for consolidated filer certification	April 1	Data Collection Agent c/o Universal Service Administrative Company form499@usac.org

* February 1: FCC Form 499-Q containing revenue information for October 1 through December 31 of the prior calendar year and projections for April 1 through June 30.
May 1: FCC Form 499-Q containing revenue information for January 1 through March 31 and projections for July 1 through September 30.
August 1: FCC Form 499-Q containing revenue information for April 1 through June 30 and projections for October 1 through December 31.
November 1: FCC Form 499-Q containing revenue information for July 1 through September 30 and projections for January 1 through March 31 of the coming year.

** The universal service administrator will calculate the amount of contribution due and send a bill to the billing contact person and billing address identified in Line (112) of the FCC Form 499-Q.

For information on filing electronically, go to http://forms.universalservice.org/

Filers may file the consolidated filer certifications, and traffic studies by submitting electronic copies to: form499@usac.org.

D. Rounding of Numbers and Negative Numbers

Dollar Amounts. Reported revenues in Block 3 that are greater than a thousand dollars may be rounded to the nearest thousand dollars. **Dollar amounts may be reported in whole dollars**. For example, $2,271,881.93 could be reported as $2,271,882 or as $2,272,000, but could not be reported as $2272 thousand, or $2.272 million. Enter $0 in any line for which the contributor had no revenues for the period being reported.

Negative Numbers. Contributors are directed to provide billed revenues on Lines 115 through 119 without subtracting any expenses, allowances for uncollectibles or settlement payments and without making out-of-period adjustments. The amount of projected uncollectibles (the difference between Line 119 and Line 120) cannot exceed projected billings. Therefore, do not enter negative numbers on the form.

E. Obligation to File Revisions

A contributor must file a revised 499-Q Worksheet if it discovers an error in the data that it reports, i.e., if the filer discovers that it omitted or misclassified a major category of revenue. However, revised filings must be made within 45 calendar days of the original filing date. In general, the historical revenues contained in

the quarterly filings will be based on unaudited books from a point in time and the projections will represent the filer's expectations as of a point in time. Contributors need not file revisions to the FCC Form 499-Q as a result of ordinary accounting adjustments such as out-of-period adjustments. Revenue information from the FCC Form 499-A will be used to ensure that contributions for the whole year are based on all subject revenues for the year.

Filers should not file revised revenue information to reflect mergers, acquisitions, or sales of operating units. In the event that a filer that submitted an FCC Form 499-Q no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make assessed contribution or true-up payments, if any, for the funding period and must notify USAC, the Form 499 Data Collection Agent.

F. Record Keeping

Filers shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for five years.[15] Additionally, filers must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's Office of Inspector General, to the USF Administrator, and to their auditors upon request.[16] Review by the Commission or the Administrator may cover any existing corporate records, not just those specifically maintained for the five year period.[17] Entities that acquire carrier operations through acquisition of property, consolidation, merger, etc., must maintain the records of the acquired entity.[18]

G. Compliance

Failure to file the Telecommunications Reporting Worksheet or to pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law.[19] In addition, entities may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions.[20] Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code.[21]

III. Specific Instructions

A. Block 1: Contributor Identification Information

Block 1 of the Telecommunications Reporting Worksheet requires identification information.

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[15] *See USF Comprehensive Review Order*, 22 FCC Rcd at 16386-87, para. 27 ("These documents and records should include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation").

[16] *See id*. Administrator refers to the Universal Service Administrative Company.

[17] *See* 47 U.S.C. § 218.

[18] *See* 47 CFR § 42.1.

[19] In addition, pursuant to the Debt Collection Improvement Act of 1996, the Commission shall withhold action on applications or other requests for benefits by delinquent debtors and dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. *See* 47 CFR § 1.1910; *Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, 19 FCC Rcd 6540 (2004).

[20] *See* 47 CFR § 54.713 (universal service); 47 CFR § 64.604(c)(5)(iii)(B) (TRS); *see also* 47 CFR § 52.17(b) (NANPA); 47 CFR § 52.32(c) (LNPA).

[21] *See* 47 CFR § 54.711.

Line 101 – enter the "Filer 499 ID" number for the filing entity. This code is assigned by the Commission's Data Collection Agent after a company files its first FCC Form 499-A. Filer 499 IDs for current filers can be found at http://apps.fcc.gov/cgb/form499/499a.cfm or in the FCC report *Telecommunications Provider Locator*, which is available on the Commission's web site at http://www.fcc.gov/wcb/iatd/lec.html. This code should be entered at the top of any cover letter or supporting documentation. New filers are assigned Filer 499 ID numbers after a completed FCC Form 499-A Telecommunications Reporting Worksheet is received by the Data Collection Agent.

Line 102 – enter the legal name of the filer as it appears on articles of incorporation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis.[22]

Line 103 – provide the Internal Revenue Service (IRS) employer identification number (EIN) for the filer. This should be the same EIN that the company uses to file any federal taxes, if the filer offers services subject to those taxes. Do not use individual social security numbers for the federal EIN. If a filer lacks an EIN (*i.e.* has no taxpayer identification number to provide other than an individual social security number), it should contact USAC (see section IV.B for contact information) so that it can be assigned an alternative identification number. Consolidated filers must provide the EIN associated with the Affiliated Filers Name.

Line 104 – provide the principal name under which the company conducts telecommunications activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries.

Lines 105 and 105.1 – use this block to provide a common identifier for all affiliated filers (the "Affiliated Filers Name"). This is typically the name of the filer's holding company or controlling entity, if any. Amongst a large group of affiliates, this may be the name of the predominant commonly owned or controlled entity. The common name used by all affiliates need not be a common carrier. All reporting affiliates or commonly controlled entities should have the same Affiliated Filers Name and IRS EIN associated with the Affiliated Filers Name appearing on Line 105 and Line 105.1. For those entities also required to ~~file FCC Form 477~~submit information to the Broadband Data Collection (BDC) system, use the same single name that is used in the FCC Form 477 and/or the BDC broadband deployment submissions to indicate common ownership or control.[23]

- Unless otherwise specifically provided, an affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."[24] For this purpose, the term 'owns' means "to own an equity interest (or the equivalent thereof) of more than 10 percent."[25]
- If the filer has no affiliates, check the appropriate box on Line 105.

Line 106 – provide the filer's FCC Registration Number (FRN). The FRN is a ten digit number that includes a check-digit. The FRN is used to identify an entity within all Commission Licensing/Filing systems and RAMIS (the Commission's Revenue Accounting Management Information System.) This

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[22] *See* section II-B, page 6, for information on making consolidated filings.

[23] The Commission adopted an Order ending the collection of broadband deployment data through the FCC Form 477 in December 2022. *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, paras. 11-10, Order, FCC 22-93 (rel. Dec. 9, 2022). Pursuant to the Order, the Commission continues to collect broadband and voice subscription data using the FCC Form 477, but filers submit such data solely through the BDC system. *Id.* at para. 13.

[24] *See* 47 U.S.C. § 153(2).

[25] *Id.*

number is assigned by CORES (the Commission Registration System) and can be obtained at https://apps.fcc.gov/cores/userLogin.do. For assistance, contact the CORES help desk at (877) 480-3201 or by e-mail at CORES@fcc.gov.

Line 107 – enter the complete mailing address of the corporate headquarters of the reporting entity.

B. Block 2: Contact Information

Lines 108-111 – enter the name, telephone number, fax number, and email address of the person who filled out the FCC Form 499-Q. This should be a person who can provide clarifications or additional information, and, if necessary, who could serve as the first point of contact in the event that either the Commission or an administrator should choose to verify or audit information provided in the Telecommunications Reporting Worksheet. Email addresses must be provided if available. Email addresses, other than those for agents for service of process, will not be shared with parties other than the Commission or the Administrator.

Line 112 – provide a billing contact person name and address for administrators to send billing information for contributions to the universal service fund. Information on establishing electronic fund transfer and bills for universal service will be sent to this address unless other arrangements are made via written request.

C. Block 3: Contributor Revenue Information

Line 113 – Check the appropriate filing due date corresponding to the historical and projected revenue you are reporting.

Lines 114-120– Provide detailed revenue data.

1. Separating Telecommunications Revenues from Service Provided to Other Contributors to the Federal Universal Service Support Mechanisms for Resale [Line 115] from Telecommunications Revenues from Service Provided to End Users [Line 116] (carrier's carrier vs. end-user)

In the Telecommunications Reporting Worksheet, filers must report revenues using two broad categories: (1) revenues from contributing resellers, intercarrier compensation, and universal service support and (2) revenues from all other sources. Taken together, these revenues should include all revenues billed to customers and should include all revenues on the reporting entities' books of account. The FCC Form 499-A instructions provide more extensive information about each of these categories and are incorporated by reference in these instructions. Filers who are not familiar with the more explicit descriptions provided in Section IV.C.4 of the annual Telecommunications Reporting Worksheet (FCC Form 499-A) instructions should familiarize themselves with those instructions before completing this form.

Revenues from services provided by underlying carriers to other entities that meet the definition of "reseller" (*see* below) are referred to herein as "carrier's carrier revenues" or "revenues from resellers." Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes foreign and non-telecommunications revenues.

Revenues from Resellers -- For the purpose of completing Line 115, a "reseller" is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications into its own offerings; *and* (2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from those offerings.[26] Specifically, a customer is a reseller if it incorporates purchased wholesale service into an offering that is, at least in part, assessable

[26] *Universal Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780, 13781-82, para.3 (2012) (*2012 Wholesaler-Reseller Clarification Order*).

telecommunications and can be reasonably expected to contribute to the federal universal service support mechanisms for that portion of the offering.[27]

Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that meet the definition of reseller. The requirements for those procedures are described in Section IV.C.4 of the FCC Form 499-A instructions. Filers that do not comply with the standard described therein will be responsible for any additional universal service assessments that result if their revenues must be reclassified as end-user revenues.

Revenues from Entities Exempt from USF Contributions -- For the purposes of filling out this Worksheet -- and for calculating contributions to the universal service support mechanisms -- certain telecommunications carriers and service providers may be exempt from contribution to the universal service support mechanisms. These exempt entities, including "international only" and "intrastate only" providers and providers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues on Line 115. That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Line (116). Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.

2. Column (a) - total revenues

The reporting entity must report gross revenues from all sources, including nonregulated and non-telecommunications services on Lines 115 through 117 and these must add to total gross revenues as reported on Line 118. Gross revenues include account set-up, connection, service restoration, termination and other non-recurring charges. These charges should be reported on the same line that the filer reports any associated recurring revenue. For example, an early termination charge to an end user for an interstate private line service would be reported as interstate revenue on Line 116. Deposits are not revenue. Gross revenues should include revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services. Gross revenues consist of total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments. Gross revenues do not include amounts that cannot be billed to customers. Gross revenues should include collection overages and unclaimed refunds for telecommunications and telecommunications services when not subject to escheats. Gross billed revenues may be distinct from booked revenues. National Exchange Carrier Association (NECA) pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool. Entities making consolidated filings must include in their FCC Form 499 Filings all revenue on the consolidated books of account.[28]

Where two contributors have merged prior to the filing date, the successor company should report total revenues for the reporting period for all predecessor operations. The two contributors, however, should continue to report separately if each maintains separate corporate identities and continues to operate.[29] Where an entity obtains, through purchase, merger or transfer, the telecommunications operations or customer base of a telecommunications provider during a quarter, the acquiring company must report all

[27] Thus, for example, if a customer purchases a DS1 line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service. *See id.* at 13796, para. 34 n.98.

[28] For additional information regarding the reporting of revenues filers should refer to the FCC Form 499-A Instructions. *FCC Form 499-A Instructions* at 15-30.

[29] *See also* section II-E above.

telecommunications revenues associated with such operations or customer base including revenues billed in the quarter prior to the date of acquisition.

Gross revenues also should include any surcharges on telecommunications services or interconnected VoIP services that are billed to the customer and either retained by the contributor or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenues but which instead are remitted to government bodies. Note that any charge included on the customer bill and represented to recover or collect contributions to federal or state universal service support mechanisms must be included in Line 116. Filers should report as intrastate revenues state universal service charges only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customer bills. Other surcharges treated as revenue should be included in the revenue categories on which the surcharges were levied.

For international services, gross revenues consist of gross revenues billed by U.S. contributors with no allowances for settlement payments. International settlement receipts for foreign billed service should not be included in U.S. telecommunications revenues.[30] Note that if the filer receives the traffic in the United States, then it is providing ordinary international service from the United States to a foreign point and receipts from the originating carrier would be reported as revenue on Line 116 (c).

For FCC Form 499 purposes, credits that are issued by the filer may be recognized only when redeemed. In Form 499 worksheets, filers that use earned revenue to represent billed revenue may recognize credits when redeemed but may not report negative revenues. Other filers should include credits in uncollectibles, when earned.

For international private line services, U.S. providers must report on Line 116 revenues from the U.S. portion of the circuit to the theoretical midpoint of the circuit regardless of whether such revenues were billed to the customer by the filer or by a partner provider in a foreign point. Revenues from circuits within the United States that connect a customer to an international circuit should be reported as interstate on Line 116.

Revenues from circuits that connect two foreign points should be reported on Line 118.

For purposes of completing this Worksheet, prepaid card revenues should be recognized when end-user customers purchase the cards.

If you have any revenue for Lines 115 and 116, you may not omit the dollar amounts from column (a) even if 100% of the revenue is for interstate or international service.

3. Column (b) and (c) - interstate & international

Columns (b) and (c) are provided to identify the part of gross revenues that arise from interstate and international services for Lines 115 and 116. Intrastate telecommunications means communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia. Interstate and international telecommunications means communications or transmission between a point in one State, Territory, possession of the United States or the District of Columbia and a point outside that State, Territory, possession of the United States or the District of Columbia. Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed local number portability surcharges, should be identified as interstate revenues. This includes amounts incorporated in or bundled with other local service charges.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the end-user

[30] For example, if a filer receives payment from a foreign carrier for traffic that the filer receives outside of the United States, brings into the United States, and then reoriginates and carries the traffic to a foreign point, the filer would not include those settlement-like payments as revenues on the FCC Form 499-Q.

revenues. Similarly, if a local exchange carrier bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account. If over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.[31] In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts.

To the extent that contributors recover a non-traffic sensitive charge for the interstate portion of fixed local exchange service or for providing interstate or interstate access service from their customers through a subscriber line charge or access recovery charge, they must allocate those revenues to the interstate jurisdiction, for USF contribution reporting purposes, in a manner that is consistent with their supporting books of accounts and records.[32]

Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, on Line 116 but may not be reported as intrastate revenues.

Note: Where possible, filers should report their amount of total revenues that are interstate and international by using information from their books of account and other internal data reporting systems. Where a filer can determine the precise amount of revenues that it has billed for interstate and international services, it should enter those amounts in columns (b) and (c), respectively. Total revenues entered in column (a) include revenues billed for intrastate service even though intrastate revenues are not reported separately on the Form 499-Q.

If interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers provide on the Worksheet good-faith estimates of these figures. Good-faith estimates must be based on information that is current for the filing period. Information supporting good-faith estimates must be made available to either the FCC, data collection agent, or to the Administrator upon request. For convenience, calculated interstate and international revenue amounts that are greater than one thousand dollars may be rounded to the nearest thousand dollars. Enter zero dollars in column (b) or column (c) if, and only if, there were no interstate or international revenues for the line for the reporting period.

Safe Harbors -- Note that the FCC provides the following safe harbor percentages of interstate wireless revenues associated with Lines 115, 116, 119 and 120:[33]

37.1% of cellular and broadband PCS telecommunications revenues

12% of paging revenues

1% of analog SMR dispatch revenues

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll service charges. **All filers must report the actual amount of interstate and international revenues for these services.** For example, toll charges for itemized calls appearing on

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[31] *See Universal Service Order*, 12 FCC Rcd at 9173, para. 7788776 (1997) (citing 47 CFR § 36.154(a)).

[32] For example, to the extent that a contributor's tariff filing (or equivalent) indicates that a non-traffic sensitive charge is for interstate access, then revenues for such charge (or a portion thereof) must be allocated to interstate revenues for USF reporting purposes**.**

[33] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*2002 Second Contribution Methodology Order and FNPRM*); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21258-60, paras. 11-15 (1998) (*Wireless Safe Harbor Order*).

mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls.

The FCC provides the following safe harbor percentage of interstate interconnected VoIP revenues associated with Line 115, 116, 119 and 120:[34]

64.9% of interconnected VoIP telecommunications revenues

These safe harbor percentages may not be applied to universal service pass-through charges or other fixed local service revenues.

Wireless telecommunications providers and interconnected VoIP providers that choose to avail themselves of these safe harbor percentages for interstate revenues may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages. All affiliated wireless telecommunications providers and interconnected VoIP providers must make a single election, each quarter, whether to report actual revenues or to use the current safe harbor within the same safe harbor category.[35] So, for example, if in a calendar quarter a wireless telecommunications provider reports actual interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also report actual interstate telecommunications revenues for cellular and broadband PCS offerings. The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services.

Note: Filers should use the same methodology (traffic study or safe harbor) to report interstate and international jurisdictions on the FCC Form 499-A as used on the FCC Form 499-Qs to forecast revenue in each quarter of the applicable calendar year. For example, if a filer projected revenue based on a safe harbor for the first two quarters and based on traffic studies for the final two quarters, the amounts reported in the FCC Form 499-A for the first two quarters would be based on actual billings for those quarters and the relevant safe harbors, and the amounts reported for the final two quarters would be based on actual billings for those quarters and the traffic studies for those quarters.

Many carriers and other providers of telecommunications now offer packages that bundle fixed local exchange service with interstate toll service (*i.e.*, voice long distance) for a single price. Revenues for the whole bundle, except for tariffed subscriber line and PICC charges, should be reported on Line 116, as described more fully below. The portion of revenues associated with interstate and international toll services must be identified in columns (d) and (e), respectively.[36] Filers should make a good faith estimate of the amounts of interstate and international revenues from bundled local/toll service if they cannot otherwise determine these amounts from corporate records, and must make their methodology available to the Commission or the Administrator, upon request.

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[34] *See 2006 Contribution Methodology Reform Order* at 7532-33, 7545-46, paras. 25-27, 53-55.

[35] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 *et al.*, Order and Order on Reconsideration, 18 FCC Rcd 1421, 1424-25, para. 6 (2003) ("wireless telecommunications providers are 'affiliated' for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an 'identity of interest' with another contributor"). *See also* 47 CFR § 1.2110(c)(5).

[36] *See Universal Service Contribution Methodology, Petition for Declaratory Ruling of CTIA – The Wireless Association on Universal Service Contribution Obligations, Petition for Declaratory Ruling of Cingular Wireless, LLC*, WC Docket No. 06-122, Declaratory Order, 23 FCC Rcd 1411, 1414, para. 5 (2008) (defining "toll service") (*Separately Stated Toll Order*).

Interconnected VoIP and CMRS providers may rely on traffic studies if they are unable to determine their actual interstate and international revenues.[37] In developing their traffic studies, interconnected VoIP and CMRS providers may rely on statistical sampling to estimate the proportion of minutes that are interstate and international. Any revenues associated with charges on customer bills that are identified as interstate or international must effectively be accounted for (e.g., through proper weighting in a traffic study) as 100 percent interstate or international when reporting revenues.[38] Sampling techniques must be designed to produce a margin of error of no more than one percent with a confidence level of 95%. If the sampling technique does not employ a completely random sample (e.g., if stratified samples are used), then the respondent must document the sampling technique and explain why it does not result in a biased sample. Traffic studies should include, at a minimum: (1) an explanation of the sampling and estimation methods employed and (2) an explanation as to why the study results in an unbiased estimate with the accuracy specified above. Mobile wireless providers and interconnected VoIP providers should retain all data underlying their traffic studies as well as all documentation necessary to facilitate an audit of the study data and be prepared to make this data and documentation available to the Commission upon request. In addition, CMRS and interconnected VoIP providers that rely on traffic studies must submit those studies to USAC (*see* Figure 2 for filing instructions – including address for filing traffic studies, and filing deadlines). To enable USAC to match traffic studies filed by contributors with their FCC Form 499 filings, include the following identifying information at the top of each page of the traffic study: Filer ID; Company Name; Affiliated Filers Name (where applicable).

4. Explanation of historical revenue categories

Total gross revenue reported on Line 118 should equal the total of the detail amounts reported on Lines 115 through 117.

Line 114 – Use this line to indicate if filer is using safe harbors to allocate revenues (in Lines 119 and 120) between interstate and intrastate jurisdictions. Select all that apply. See instructions above for the use of safe harbors.

Line 115 – Revenues from services provided to other universal service contributors for resale. This line should contain revenues from telecommunications services provided to resellers (*i.e.*, telecommunications revenue derived from other universal service contributors). This category comprises what is commonly-referred to as "carrier's carrier revenues." Filers may wish to consult the instructions for FCC Form 499-A, Lines 303 through 314, when calculating this figure.

Line 116 – Universal service contribution base revenues. This line should contain end-user telecommunications revenues (*i.e.*, telecommunications revenues derived from entities that do not contribute directly to universal service), except for revenue from international calls that both originate and terminate in foreign points. Filers should consult the instructions for FCC Form 499-A, Line 420, when calculating this figure.

Line 117 – Other revenue that should not be reported in the universal service contribution base, including revenues for telecommunications services subject to forbearance from a contribution obligation. This line

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[37] *See 2006 Contribution Methodology Reform Order*, 21 FCC Rcd at 7534-36, 7547, paras. 29-33, 57; *see also Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-51 (2001) (*CPE Bundling Order*).

[38] *See Separately Stated Toll Order*, 23 FCC Rcd at 1418, para. 15. In developing traffic studies, toll service traffic must be identified and treated in a manner that recognizes that such traffic is more likely to be interstate or international than intrastate. *See id*. Additionally, appropriate weighting of the higher revenue that is often associated with toll service must be reflected in the traffic study or studies. *See id*.

should contain revenue from international calls that both originate and terminate in foreign points and revenues that are reportable on FCC Form 499-A, Line 418.

Line 117 should include all non-telecommunications service revenues on the reporting entity's books as well as some revenues that are derived from telecommunications-related functions but that should not be included in the universal service or other fund contribution bases. For example, information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. Information services also are called enhanced services because they are offered over transmission facilities used in interstate communications and employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. For example, call moderation and call transcription services are information services. These services are exempt from contribution requirements and should be reported on Line 117. Line 117 should include revenues from published directory and carrier billing and collection services. Line 117 should include revenues from the sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE). Line 117 should include inside wiring charges and inside wiring maintenance insurance. Line 117 should include the sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE. Line 117 should include pole attachment revenues. Line 117 should include revenues from providing open video systems (OVS), cable leased access, cable service, and direct broadcast satellite (DBS) services. Line 117 should include late payment charges and charges (penalties) imposed by the company for customer checks returned for non-payment. Line 117 should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, i.e., a carrier licensed in that country. Line 117 should include revenues from the provision of broadband Internet access services.

The Commission adopted two "safe harbor" methods for allocating revenue when telecommunications and CPE/enhanced services are offered as a bundled package.[39] The first option is to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications. Alternatively, contributors may elect to treat all bundled revenues as telecommunications revenues for purposes of determining their universal service obligations. Filers may choose to use allocation methods other than the two described above. Filers should realize, however, that any other allocation methods may not be considered reasonable, and will be evaluated on a case-by-case basis in an audit or enforcement context. Prepaid calling card providers may avail themselves of the bundled service safe harbors for separating revenue between telecommunications and information services.[40]

Line 118 – Gross billed revenues from all sources. This line should equal the sum of revenues by type of service reported on Lines 115 through 117.

As noted above, for further detail on the types of revenues that should be reported on Lines 115 through 117, filers may wish to consult the Instructions for the FCC Form 499-A, available on USAC's web site (https://www.usac.org/service-providers/resources/forms/).

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[39] *CPE Bundling Order*, 16 FCC Rcd 7418 at 7447-48, paras. 50-52.

[40] *See Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling, Report and Order, 21 FCC Rcd 7290, 7298. para. 22 (2006), *vacated in part, Qwest Servs. Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007).

5. Projected gross billed end-user interstate and international revenues

The projection quarter is the calendar quarter that starts two months after the filing date and finishes five months after the filing date. Line 119 should contain projected gross-billed end-user interstate and international revenues, including any pass-through charges for federal universal service contributions. These amounts should be the amounts that the filer anticipates reporting on Line 116, column (b) and column (c), in the FCC Form 499-Q filing due six months after the present filing date. In order to estimate these amounts, the filer could review the amounts they are reporting on Line 116 in the current filing and amounts reported in recent filings. In addition, filers could take into account general business conditions, new contracts covering the projection period, pricing trends, marketing programs, expansion plans, and other relevant information. Filers must develop good faith projections based on company procedures and policies. If the filer anticipates that revenues are as likely to increase as decrease, then it may copy the historic values from Line 116 to use as its projections for Line 119 or it could develop projections by trending historic values from previous quarterly filings. Filers need not make projections for Line 119 column (a).

6. Projected collected end-user interstate and international revenues

Line 120 should show the interstate and international revenues that the filer anticipates collecting from customers during the projection quarter. For this purpose "collected end-user" revenues refers to gross-billed end-user interstate and international telecommunications revenues, including any pass-through charges for federal universal service contributions, less estimated uncollectibles.[41] We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers. This percentage should be calculated in accordance with Generally Accepted Accounting Principles.[42] Thus, uncollectibles should represent the portion of gross billed revenues that the contributor reasonably expects will not be collected. Filers that use the accrual method of accounting should use the percentage of billed revenues that they recognize currently as a reserve for uncollectibles in their books of accounts. Filers that use the cash method of accounting should base this percentage on a comparison of actual collections and billed revenues, with the periods chosen to allow for the average delay between when services are billed and when payments are received. The amounts shown on Line 120 should be the amounts on Line 119 reduced by the percentage of uncollectibles.

Filers will be billed based on the amounts reported on Line 120. Any revisions to these amounts must be filed within 45 calendar days. No adjustments to billings will be made during the quarter to reflect actual levels of billed service and actual collection rates. The Administrator will use the actual revenue data provided by contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year.[43] As necessary, the administrator will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report (FCC Form 499-A), then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly projected revenues reported by a contributor are less than those reported on its annual revenue report (FCC Form 499-A), then the

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[41] *Wireless Safe Harbor Order*, 13 FCC Rcd at 21258-60, paras. 11-15; *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24970, para. 32.

[42] General Accepted Accounting Principles (GAAP) encompasses the conventions, rules, and procedures necessary to define accepted practice in the preparation of financial statements in the United States. The Financial Accounting Standards Board (FASB) is currently the primary authority to establish GAAP for all companies. Carriers subject to the Uniform System of Accounts would derive this figure from the amount recorded in Account 5301, Uncollectible Revenue - Telecommunications.

[43] *See* Telecommunications Reporting Worksheet, FCC Form 499-A, OMB 3060-0855 (*FCC Form 499-A*).

administrator will collect the difference from the contributor using an average of the two highest contribution factors from that year.

D. Block 4: Certification.

Line 121 – Filers may use the box in Line 121 to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet. By checking this box, the officer of the company signing the Worksheet certifies that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's rules.[44] All decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2 contact information) of the entities that file the Telecommunications Reporting Worksheet.

Lines 122 through 126 – An officer of the reporting entity must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and that projections provided therein represent good faith estimates based on company procedures and policies. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, vice president for finance, comptroller, treasurer, or a comparable position. If the reporting entity is a sole proprietorship, the owner must sign the certification. The signature on Line 122 must be in ink unless you are a company officer who has previously filed a signed paper form, in which case you may certify your form online.

Reporting entities have the opportunity to enter data, verify, submit and certify FCC Forms 499-A and 499-Q online via a web-based data entry system. Company officers, who have previously filed a signed paper form, may certify subsequent forms online without being required to submit signed paper forms. For those officers, an electronic signature in the signature block of each form certified by that officer will be considered the equivalent to a handwritten signature on the form. By entering his or her electronic signature into the signature block of each form, the officer, therefore, acknowledges that such electronic signature certifies his or her identity and attests under penalty of perjury as to the truth and accuracy of the information contained in each electronically signed form. Visit https://www.usac.org/service-providers/contributing-to-the-usf/forms-to-file/ for more information and access to the online filing system.

A person who willfully makes false statements on the Worksheet can be punished by fine or imprisonment under title 18 of the United States Code.[45]

Line 127 – Indicate whether this filing is an original filing or a revised filing.[46]

IV. Additional Information

A. Reminders

- Filers are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for five years. Filers also must maintain records detailing the methodology used to determine projections reported on the Telecommunications

[44] 47 CFR § 0.459. *See also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

[45] *See* 18 U.S.C. § 1001.

[46] *See* section II-E.

Reporting Worksheet. Upon request, filers may be required to provide such records and documentation to the Commission or to the administrator.

- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately unless they qualify for filing on a consolidated basis. *See* section II-B. Each affiliate or subsidiary must show the Affiliate Filers Name on Line 105.
- For information on filing electronically, go to http://forms.universalservice.org/.
- Provide data for all lines that apply. Show a zero for services for which the contributor had no revenues for the filing period.
- Contributors to universal service support mechanisms must make five FCC Form 499 filings each year. *See* Figure 2.
- Wherever possible, revenue information should be taken from the contributors' financial records. Filers also must provide projected revenue information on Line 119 through Line 120.
- The Worksheet must be signed by an officer of the reporting entity. An officer is a person who occupies a position specified in the corporate by laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* section II-C for filing instructions.
- Note that FCC Form 499 is one of several forms that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the FCC web site, at http://forms.universalservice.org/.

B. Contact Information

If you have questions about the Worksheet or the instructions, you may contact:

Universal Service Administrator	form499@usac. org (888) 641-8722

If you have questions regarding contribution amounts, billing procedures, or the support and cost recovery mechanisms, you may contact:

Universal Service Administrator	(888) 641-8722

- FCC -

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 23-489
Released: June 8, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 22-444

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 BARR TELL USA, INC. Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 22-444 (Dec. 6, 2022), Public Notice, DA 23-376 (WCB May 8, 2023).

Effective Grant Date: June 8, 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).

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DA 23-490
Released: June 8, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 22-445

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 First Communications, LLC Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 22-445 (Dec. 12, 2022), Public Notice, DA 23-377 (WCB May 8, 2023).

Effective Grant Date: June 8, 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).

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DA 23-491
Released: June 8, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 23-7

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 Versatel, LLC /dba/ 46 Labs Communications Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 23-7 (Dec. 28, 2022), Public Notice, DA 23-378 (WCB May 8, 2023).

Effective Grant Date: June 8, 2023

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

-FCC-

[1] *See* 47 CFR § 52.15(g)(3).

PUBLIC NOTICE

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

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Internet: https://www.fcc.gov
TTY: 1-888-835-5322

DA 23-492
Released: June 8, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 23-124

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 Waddell Solutions Group LLC Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 23-124 (Jan. 19, 2023), Public Notice, DA 23-379 (WCB May 8, 2023).

Effective Grant Date: June 8, 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	)	
	)	
Amendment of Section 15.255 of the Commission's Rules	)	ET Docket No. 21-264
	)	

REPORT AND ORDER

Adopted: May 18, 2023 **Released: May 19, 2023**

By the Commission: Chairwoman Rosenworcel issuing a statement.

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I. INTRODUCTION

1. In this Report and Order, we revise our rules to provide new opportunities for unlicensed field disturbance sensor (FDS) devices (e.g., radars) to operate in the 57-71 GHz band (60 GHz band) while still ensuring coexistence with other unlicensed technologies in the band. Our decision is a significant step in the continuing expansion and evolution of our rules and will supercharge the development and deployment of new and innovative radar operations—including valuable safety applications that detect unattended children in vehicles and which previously could only be permitted through a waiver of the rules.

2. Our decision also reflects the work that unlicensed radar and communication user interests have taken over the course of this proceeding to identify a path to promote operational compatibility, as well as the engagement of Federal government entities that are authorized to operate in the band. The contributions and subsequent agreement among these diverse groups gives us confidence

that the rules we adopt will successfully expand unlicensed radar use while promoting compatibility with unlicensed communications operations that have long been permitted in the band. We also uphold the fundamental principle that all unlicensed operations in the band—whether operating as communications devices or new radar applications—must not cause harmful interference to licensed and authorized Federal and non-Federal users.

3. As discussed in greater detail below, the rules we adopt set forth distinct technical and operational provisions for different segments of the band. They will permit new fixed and mobile FDS devices to implement pulse or frequency-modulated continuous-wave (FMCW) techniques to facilitate new use cases including installation on low-flying unmanned aircraft. Importantly, novel use cases that support safety, such as vehicle occupant detection, chest movement detection to determine breathing patterns, and eye lid movement detection to determine driver alertness are also expected to see widespread deployment. This approach recognizes evolution in the proceeding as different unlicensed interests provided information on the wide array of potential uses for FDS devices and developed a consensus approach for accommodating these innovative applications. Our decision is especially well suited to stimulate the rapid development of new products and services in such important areas as healthcare monitoring, personal safety, autonomous vehicles, home and industrial automation, and environmental control.

II. BACKGROUND

4. In 2021, the Commission issued a Notice of Proposed Rulemaking (*NPRM*) that proposed to change the rules in section 15.255 to permit FDS devices to operate at higher power limits and provide a more expansive range of applications than the rules currently allow.[1] The proposals, recognizing the burgeoning interest in allowing the use of mobile radars in the band for innovative and life-saving functions, represented the latest evolution in a band in which unlicensed operations have been permitted for more than 20 years. The Commission attributed this newfound interest to the availability of affordable, mass-produced chipsets that are capable of operating in the band, as well as the prospect of marketing and operating these mobile radar devices on a broad international scale.[2] The *NPRM* noted, for example, that interested parties had formed a 60 GHz Coexistence Study Group that was "looking into ways to accommodate both unlicensed communications device and FDS operations in the band," and whose members had "encouraged [the Commission] to initiate a rulemaking proceeding to review … the rules with a goal of putting in place a new framework to promote further innovation in the 60 GHz band by both unlicensed communications and FDS operations."[3] It also recognized that the FCC's 2020 Technological Advisory Council (TAC) panel recommended that the Commission initiate a rulemaking proceeding to examine the unlicensed rules governing 60 GHz operations.[4]

5. Radars operate by transmitting radiofrequency (RF) signals at targets and analyzing the subsequent reflections to determine the targets' speed, range, and direction.[5] Based on the record before us and prevalent technologies, the two common types of radars that we anticipate will operate in the 60 GHz band are FMCW radars and pulse radars. An FMCW radar transmits a continuous sinusoid signal (chirp) whose frequency changes linearly in time to sweep over a defined frequency band. A collection of evenly spaced chirps constitutes an FMCW radar frame. On the other hand, pulse radars typically transmit nanosecond-long pulses in the time domain that instantaneously spread frequencies across a wide

[1] *Amendment of Section 15.255 of the Commission's Rules*, ET Docket 21-264, Notice of Proposed Rulemaking, 36 FCC Rcd 11901 (2021) (*NPRM*).

[2] *NPRM,* 36 FCC Rcd at 11904, para. 9.

[3] *NPRM,* 36 FCC Rcd at 11906, para. 12.

[4] *NPRM* 36 FCC Rcd at 11906, para. 13.

[5] *See* 47 CFR § 2.1(c) (radar is "[a] radiodetermination system based on the comparison of reference signals with radio signals reflected, or retransmitted, from the position to be determined"); ITU Radio Regulations 1.100-102 (2012).

bandwidth. As discussed in greater detail below, the rules we are adopting are broad enough to account for use of these radar types.

6. In the 60 GHz band, radars are regulated under section 15.255 of Part 15 of the Commission's rules. The Part 15 rules permit low-power intentional radiators (popularly known as "unlicensed devices") to operate without an individual license where such use is not anticipated to cause harmful interference to authorized users of the radio spectrum.[6] Unlicensed devices in the 60 GHz band generally include indoor/outdoor communication devices such as WiGig,[7] wireless local area networks (WLANs),[8] outdoor fixed point-to-point communication links, and FDS—which includes radar operations.[9] Unlicensed device users protect the operations of authorized Federal and non-Federal users in the band. These users operate under a variety of allocations, including the Mobile, Fixed, Inter-Satellite, Earth-Exploration Satellite Service (EESS), Space Research, Mobile-Satellite, Radiolocation, Radionavigation, and Radionavigation-Satellite services.[10]

7. When it first adopted Section 15.255 in 1995, the Commission stated its intent to develop the 60 GHz band's potential to achieve communications capabilities similar to fiber and coaxial cable; thus, it originally prohibited FDS operation in the band.[11] When it finalized the rules by adopting a spectrum etiquette[12] three years later, it also included a provision that permitted only fixed FDS operation in the band.[13] In 2016, the Commission expanded unlicensed device use in the band to permit limited mobile radar operations and to extend the use of fixed field disturbance sensors to the 64–71 GHz band. Specifically, the Commission's decision permitted the "narrow application of mobile radars for short-range interactive motion sensing" (SRIMS) at reduced power levels to ensure that they would

[6] The fundamental operating conditions under part 15 are that the operator of a part 15 device has no vested right to continued use of any given frequency, must accept interference that may be caused by the operations of authorized users or other unlicensed devices, and must not cause harmful interference it causes. Should harmful interference occur, the operator is required to immediately correct the interference problem, even if correction of the problem requires ceasing operation of the part 15 equipment causing interference. 47 CFR § 15.5.

[7] WiGig, alternatively known as 60 GHz Wi-Fi, refers to a set of 60 GHz wireless network protocols. It includes the current Institute of Electrical and Electronics Engineers (IEEE) IEEE 802.11ad standard and also the upcoming IEEE 802.11ay standard. The name *WiGig* comes from Wireless Gigabit Alliance, the original association being formed to promote the adoption of IEEE 802.11ad. However, it is now certified by Wi-Fi Alliance. *See* https://www.wi-fi.org/discover-wi-fi/wi-fi-certified-wigig.

[8] A wireless LAN (WLAN) is a wireless network that links two or more devices using wireless communication to form a local area network (LAN) within a limited area such as a home, school, computer laboratory, campus, or office building. *See generally* Wi-Fi Alliance, *Wi-Fi Certified WiGig,* https://www.wi-fi.org/discover-wi-fi/wi-fi-certified-wigig.

[9] As discussed *infra,* the Commission has a long history of considering radar devices in Part 15 of the rules as a subset of FDS. *See, e.g.*, 47 CFR §§ 15.503, 15.515. Unless specifically noted, we use the terms "FDS" and "radar" herein interchangeably.

[10] 47 CFR § 2.106. Industrial, scientific and medical (ISM) equipment may also operate in the band at 61.00-61.50 GHz, pursuant to 47 CFR § 18.301.

[11] *Amendment of Parts 2, 15 and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications,* ET Docket No. 94-124, First Report and Order and Second Notice of Proposed Rule Making, 11 FCC Rcd 4481, 4488, para. 14 (1995).

[12] A spectrum etiquette is a set of rules to facilitate accessing and sharing of the same spectrum among all authorized users.

[13] The provisions for fixed FDS operations were part of the spectrum etiquette developed by the Millimeter Wave Communications Working Group (MWCWG) at the behest of the Commission to facilitate coexistence of all 60 GHz devices in the 57-64 GHz band and adopted into the rules in 1998. *See Amendment of Parts 2, 15 and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications,* ET Docket No. 19-124, Third Report and Order, 13 FCC Rcd 15074 (1998).

successfully co-exist with co-channel communications devices already permitted to operate in the band.[14] While the Commission did not adopt a specific definition for SRIMS, in permitting narrow use of short-range mobile radars it discussed the work of Google LLC (Google) in developing its "Soli" sensor technology, which envisioned that smartphones and other personal devices would be able to sense hand gestures when a user is located at a very short distance from the device to perform functions such as controlling web pages or answering phone calls.[15]

8. Since 2016, the Commission's Office of Engineering and Technology (OET) has granted focused rule waivers to support discrete radar applications, all based on an increased interest in FDS operation in the 60 GHz band. First, in 2018, OET granted Google a waiver of the emission limits to allow Soli radar devices to operate at a higher output power level than what had been authorized in the rulemaking.[16] The waiver permitted Google to deploy its Soli sensor technology at 10 dBm peak transmitter conducted output power, 13 dBm peak EIRP level, and 13 dBm/MHz power spectral density, with a maximum 10% duty cycle in any 33 ms interval.[17] More recently, in 2021, OET granted waivers to several parties to permit vehicle cabin-mounted radars as well as health-care related and other applications in the 57-64 GHz range at the same power levels as those granted to Google in 2018.[18] These narrowly tailored waivers support an especially compelling public interest—using radar technology to monitor for children left in dangerously hot cars, and to trigger alerts that could save lives.[19] In addition, OET granted a waiver to Leica Geosystems AG in July 2020 that allows a limited number of radars to operate in the 60-64 GHz band on specialized unmanned aircraft for the specific purpose of avoiding collisions with structures, supporting wires, or other fixed objects during structure visual inspection operations.[20]

9. Under the current rules, FDS operations are limited to fixed operation or when used for SRIMS.[21] While FDS devices are limited to a maximum transmitter conducted output power not to exceed -10 dBm and a maximum EIRP level not to exceed 10 dBm, a fixed FDS device with an occupied bandwidth fully contained within the 61.0-61.5 GHz Industrial, Scientific, and Medical Equipment (ISM)

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[14] 31 FCC Rcd at 8133-8134, para. 337 (2016).

[15] *Id.* Google developed the Soli sensor to capture motion in a three-dimensional space using a radar beam, which enables persons to use gestures and motions to control a smartphone's functions or features. *See* https://atap.google.com/soli.

[16] *Google LLC Request for Waiver of Section 15.255(c)(3) of the Commission's Rules Applicable to Radars used for Short Range Interactive Motion Sensing in the 57-64 GHz Frequency Band*, DA 18-1308, Order, 33 FCC Rcd 12542 (OET 2018) (*Google Waiver*).

[17] The waiver permitted a 20 dB increase in the conducted power and a 3 dB increase in the EIRP over what the rules currently permit.

[18] *Vayyar Imaging Ltd. Request for Waiver of Section 15.255(c)(3) of the Commission's Rules for Radars used for Interactive Motion Sensing in the frequency band 57-64 GHz*, ET Docket Nos. 20-15, 20-121, 20-263, 20-264, 20-435, and 20-434, Order, DA 21-407 (OET 2021). *See also*, *Petition of Faurecia Clarion Electronics North America regarding 47 CFR § 15.255*, Order, DA 21-811 (OET Jul. 9, 2021); *Request by Texas Instruments Incorporated for Waiver of 47 CFR § 15.255(c)(3)*, Order, DA 21-812 (OET Jul. 9, 2021); *Request by Amazon.com Services LLC for Waiver of 47 CFR § 15.255(c)(3)*, Order, DA 21-813 (OET Jul. 9, 2021); *Request by Acconeer AB for Waiver of 47 CFR § 15.255(c)(3) rules*, Order, DA 21-814 (OET Jul. 9, 2021); *Request by Vayyar Imaging Ltd. for Waiver of 47 CFR § 15.255 rules*, Order, DA 21-815 (OET Jul. 9, 2021); *Request by Huyndai Mobis Co., Ltd. for Waiver of 47 CFR §§ 15.255(a)(2) & (c)(3)*, Order, DA 21-816 (OET Jul. 9, 2021).

[19] *FCC Permits Hot-Car Sensors to Save Children*, Press Release (April 14, 2021) https://www.fcc.gov/document/fcc-permits-hot-car-sensors-save-children.

[20] *In the Matter of Leica Geosystems AG Request for Waiver of Section 15.255 of the Commission's Rules Applicable to Radars used on Unmanned Aerial Vehicles in the 60-64 GHz Frequency Band*, ET Docket No. 19-350, DA 20-795, Order, 35 FCC Rcd 7929 (OET 2020) (*Leica Waiver Order*).

[21] 47 CFR § 15.255(a)(2).

band may operate with average output power levels up to 40 dBm and peak output power levels up to 43 dBm.[22] Finally, operations are prohibited on-board aircraft, except on aircraft that are equipped with a high RF attenuation body (e.g., commercial airliners) while forming a "closed exclusive on-board communication networks within the aircraft."[23]

10. At the time the *NPRM* was issued, there was no uniform consensus for how best to accommodate new FDS radar applications in the 60 GHz band while ensuring coexistence with incumbent unlicensed uses. Nevertheless, the Commission found that the extensive analysis associated with the waiver requests, the widespread consumer use of Google's Soli-equipped devices without reported cases of harmful interference, and the ongoing industry interest in promoting coexistence gave it confidence "that there is now sufficient information for us to build a record to expand unlicensed mobile radar use beyond the toehold the Commission first provided in 2016 and the narrow waivers that have been issued to date."[24]

11. As such, the *NPRM* offered a high level proposal that would have provided for all FDS devices, mobile or fixed, to operate in the 57-64 GHz portion of the band at a maximum of 20 dBm average EIRP, 13 dBm/MHz average EIRP power spectral density, and 10 dBm transmitter conducted output power, along with a maximum 10% duty cycle restriction within any 33 ms interval; allowed fixed and mobile FDS devices to operate across the 57-71 GHz band at the existing 10 dBm EIRP and -10 dBm conducted output power limits specified in the rules, without any duty cycle limitations; and asked about other methods to potentially enhance coexistence in the band.[25] The Commission did not propose any rule revisions that would apply to existing unlicensed communication devices such as WiGig, WLAN, or fixed point-to-point wireless links that currently operate in the 57-71 GHz band.[26] The *NPRM* further recognized that operation at higher power than specified in the Commission's existing rules has been allowed in Europe under general rules for short-range devices,[27] and considered how we might be able to harmonize any revisions with applicable European Telecommunications Standards Institute (ETSI) standards to the extent appropriate. Throughout the *NPRM*, the Commission asked questions about its specific proposals, and also specifically "s[ought] input on the work results of any other coexistence standards activities (international and domestic) and/or cooperative works between communications and

[22] 47 CFR § 15.255(c)(2), (c)(3), respectively.

[23] This refers to entertainment systems that deliver movies and music to passengers on-board commercial aircraft. 47 CFR § 15.255(b). The rule, which specifically prohibits operation of 60 GHz transmitters on-board unmanned aircraft (UA) because these types of aircraft do not provide substantial RF shielding, serves to protect EESS passive sensors as well as Radio Astronomy Service (RAS) operations. *See Amendment of Parts 2, 15, and 97 of the Commission's Rules to Permit Use of Frequencies Above 40 GHz for New Radio Applications*, ET Docket No. 94-124, FCC 95-499, First Report and Order and Second Notice of Proposed Rule Making, 11 FCC Rcd 4481, 4496-97, para. 35 (1995).

[24] *NPRM*, 36 FCC Rcd at 11909, para. 19.

[25] *NPRM*, 36 FCC Rcd at 11901, para. 2.

[26] Example of such devices can be found at manufacturers' websites such as http://www.airlinx.com and https://www.ignitenet.com/technology/metrolinq/.

[27] *NPRM*, 36 FCC Rcd at 11905, para. 10. The European Telecommunications Standards Institute (ETSI) describes short-range devices (SRD) as radio transmitters that offer a low risk of interference with other radio services, usually because their transmitted power, and hence their range, is low. This definition "Short Range Device" can encompass many different types of wireless equipment, including but not limited to door and gate openers, alarms and movement detectors, medical implants and remote control devices. *See* https://www.etsi.org/technologies/short-range-devices#:~:text=Standards-,Introduction,hence%20their%20range%2C%20is%20low. ETSI regulations for SRD operating in the 57-64 GHz band are found in ETSI EN 305 550-1 V1.2.1 (2014-10), Clause 7.2.2, https://www.etsi.org/deliver/etsi_en/305500_305599/30555001/01.02.01_60/en_30555001v010201p.pdf; 47 CFR § 15.255(c)(3). ETSI released an updated draft version of this standard in 2017 which has the same EIRP and PSD limits in the 57-64 GHz band as the 2014 version. *See* ETSI EN 305 550 V2.1.0 (2017-10), Clauses 4.3.3.3 and 4.3.4.3, https://www.etsi.org/deliver/etsi_en/305500_305599/305550/02.01.00_20/en_305550v020100a.pdf.

FDS study groups that may have taken place, and how such work may inform our proposals to expand unlicensed use of the band."[28]

12. In the time since the *NPRM* was released on July 14, 2021, the record has reflected evolving views on how we can accomplish the goals of the rulemaking. The comment cycle initially showed prevalent disagreements between the radar and communication proponents, with parties from each group opposing different aspects of the proposals. The large number of *ex parte* filings following the close of the comment period reflect how both sides, individually and jointly, have been engaged in ongoing attempts to resolve their differences with various proposals for power levels and duty cycles/radar transmission off-times based on different segmentations of the 57-64 GHz band.[29] Two recent submissions document the fruit of these labors, and are significant milestones in the history of this proceeding: the Industry Consensus Agreement submitted February 27, 2023 that addresses the interests of both FMCW radars and communications devices,[30] and a separate Pulse Radar Joint Agreement submitted November 10, 2022 that describes technical parameters suitable for pulse radar operations.[31]

III. DISCUSSION

13. The targeted changes to the Part 15 rules that we are adopting are optimized to encourage the development of important innovative FDS applications while promoting the growth of equally important innovative immersive communication applications. Taking into account the record as a whole, including the Industry Consensus Agreement and the Pulse Radar Joint Agreement, as well as the filings in response thereto, we find that these two types of unlicensed technologies (i.e., radar and communications) can successfully co-exist and expand the applications available in the 60 GHz band under our revised rules.

14. First, we clarify the relationship between radars and FDS applications. We also modify our rules to expand mobile FDS operations within the 60 GHz band, including within the 61.0-61.5 GHz sub band, where higher powered operations are permitted but only for fixed use; with these modifications, we retire the specific provisions that had been established for SRIMS.

15. Second, for FDS devices that limit their operating frequencies to the 57-64 GHz portion of the 57-71 GHz band, we permit various EIRP levels along with specific duty cycle[32] restrictions related to specific segmentations of the band. We find that these distinctions, described in greater detail below, offer the best opportunity for new and existing unlicensed devices to successfully co-exist in the 60 GHz band. In conjunction with these rules, we address the applicability of additional technologies and technical approaches that were discussed in the *NPRM*.

16. Third, we permit FDS operation on-board unmanned aircraft (UA) flying at altitudes less than 121.92 meters (400 feet) above ground level, limited to the 60-64 GHz band, at up to 20 dBm peak EIRP subject to a 50% duty cycle, and discuss how our new rules for FDS devices relate to existing

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[28] *NPRM*, 36 FCC Rcd at 11915, para. 33.

[29] *See e.g.*, Robert Bosch LLC *ex parte* (filed Jan. 30, 2023); Joint *ex parte* from Acconeer AB, Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated (filed Nov. 10, 2022).

[30] Joint *ex parte* from radar proponents (represented by Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Texas Instruments Incorporated, and Vayyar Imaging Ltd.) and communications proponents (represented by Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated) (filed Feb. 27, 2023) (Industry Consensus Agreement).

[31] Joint *ex parte* from Acconeer, Intel, Meta Platforms, and Qualcomm (filed Nov. 10, 2022) (Pulse Radar Joint Agreement).

[32] *Duty cycle* is defined as the ratio of the time-on time of a transmitter to the sum of the time-on and time-off times; Time-on / (Time-on + Time-off). *See Book/Definitions Electrical Engineering Dictionary,* Ed. Phillip A. Laplante Boca Raton: CRC Press LLC (2000).

provisions for limited in-cabin aeronautical use. We also address matters related to compliance testing and use of equipment that currently operates under waivers of our existing rules.

A. Definitional Clarification and Mobile Use Expansion

17. *Definition of FDS/Radar*. In the *NPRM*, the Commission stated that, although Section 15.3(l) of our rules provides a definition for "field disturbance sensor,"[33] one must look to the general part 2 rules to find a definition for "radar."[34] It asked whether the rules related to "field disturbance sensors" in section 15.255 are sufficiently broad and flexible to accommodate the classes of devices that parties anticipate will be developed to operate in the 57-71 GHz band and whether the definition contained in part 15 of the rules should be modified to provide greater clarity regarding the relationship between FDS and radars.[35]

18. We clarify that radars are a sub-category of FDS as defined in both sections 15.3(l) and 2.1 of our rules.[36] We further find that the radar definition in section 2.1 of our rules is sufficiently broad when used in conjunction with the FDS definition of section 15.3(l) to accommodate the types of FDS applications envisioned for the 60 GHz band. We agree with both Texas Instruments (TI) and IEE Sensing that our rules must allow for the detection of static persons or objects and cover all cases of motion/presence detection, regardless of the particular radar topologies employed,[37] and we find that modifying the definition in section 15.3(l) of the rules to include radars will achieve this objective. The final rules are set forth in Appendix B, *infra*.

19. *Mobile Use of FDS Devices.* The Commission's history of expanding unlicensed use of the 60 GHz band has focused on fixed FDS use, with limited and relatively recently adopted provisions for mobile use. In the *NPRM*, the Commission sought comment on how it should interpret "fixed" and whether it should incorporate a specific definition for that term into the Part 15 rules.[38] The Commission further observed that a review of the 1998 Report and Order that first permitted fixed FDS use in the band suggests that the Commission was anticipating a narrow set of applications for industrial settings where

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[33] 47 CFR § 15.3(l) defines a field disturbance sensor as "a device that establishes a radio frequency field in its vicinity and detects changes in that field resulting from the movement of persons or objects within its range." The part 15 definition for FDS sensors was adopted in 1971, in *Amendment of Part 15 of the Commission's Rules to Add Regulations Governing the Use of Field Disturbance Sensors (Formerly Designated as Radio Frequency Operated Intruder Alarms)*, Docket No. 13863, FCC 71873, Report and Order, 31 FCC 2nd 210 (1971). The Commission did express that it "will interpose no objection to the operation of speed measuring equipment (or other radiolocation devices) under the regulations for field disturbance sensors…" while discussing radars in this context. *Id*., at para. 21. In 1995, the Commission adopted the rules prohibiting FDS, specifically mobile FDS in 47 CFR § 15.255 in *Amendment of Parts 2, 15 and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications*, ET Docket No. 94-124, FCC 95-499, First Report and Order, 11 FCC Rcd. 4481, 4496 (1995); in 2002, the Commission adopted rules for UWB radars in 47 CFR §§ 15.503, 15.515, specifically defining radars as FDS in *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, ET Docket No. 98153, FCC 02-48, First Report and Order, 17 FCC Rcd 7435 (2002); in 2003, the Commission adopted rules for vehicular radars in 47 CFR § 15.252, specifically labeling vehicular radars as FDS in *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, ET Docket No. 98-153, FCC 04-285, Second Report and Order, 19 FCC Rcd 24558 (2003).

[34] 47 CFR § 2.1 defines a radar as "a radiodetermination system based on the comparison of reference signals with radio signals reflected, or retransmitted, from the position to be determined". This radar definition is taken from the International Telecommunication Union (ITU) Radio Regulations (RR).

[35] *NPRM*, 36 FCC Rcd at 11908, para. 17.

[36] 47 CFR §§ 15.3(l) and 2.1.

[37] TI Comments at 5; IEE Sensing Comments at 3.

[38] The general definitions in part 2 of our rules provide no guidance. Section 2.1 defines "Fixed Service" as "A radiocommunication service between specified fixed points," which is not relevant to FDS operations.

the equipment would rarely if ever be moved.[39] In the NPRM in this proceeding and with respect to the 61.0-61.5 GHz band in particular, the Commission tentatively concluded that fixed FDS operations should be interpreted as those instances where an FDS device is stationary and is operating at a discrete location for an indefinite—*i.e.*, more than mere transitory—period. It also sought comment on whether there is a bright line rule to differentiate fixed and mobile FDS operations.[40]

20. Many commenters express support for eliminating the distinction between fixed and mobile FDS use or ask us to take an agnostic use case approach.[41] Among the commenters that suggest specific definitions, Vayyar says that we should interpret "fixed" in an expansive manner, such as "remaining at same geographical location while operating," allowing moving the sensor within the premises or to other premises (e.g. within an apartment, hospital, ship, etc.).[42] Google suggests keeping the high power allowed in the 61.0-61.5 GHz band and recommends interpreting "fixed" FDS operations as those instances where an FDS device is stationary and is operating at a discrete location for an indefinite period,[43] and Bosch suggests distinguishing between fixed and mobile based on whether the device is mounted on a structure (e.g. building, streetlight, or tower) or connected to permanent infrastructure.[44]

21. We find that the record illustrates radar use cases that can be ubiquitous and sufficiently fluid in space (such as on a vehicle, or a hospital equipment cart), such that to fully realize the potential benefits of the band, many radar applications will have mobile characteristics even if they are affixed to equipment that can remain stationary in a particular location while the radar is in operation. Thus, we conclude that the best course is to broadly expand mobile use throughout the band so that fixed and mobile distinctions are generally not relevant for operating under the revised rules.[45] For this reason, we are not adding a specific "fixed" definition in our rules for unlicensed FDS devices.

22. For purposes of the 61.0-61.5 GHz ISM band segment, existing section 15.255(c)(2) of the rules permits a fixed FDS device to operate at up to 40 dBm average EIRP and at up to 43 dBm peak EIRP.[46] Under this rule, a fixed FDS device's occupied bandwidth must be fully contained within the 500-megahertz bandwidth of the 61.0-61.5 GHz band; and it must attenuate its signals outside the 61.0-61.5 GHz band, but still within the 57-71 GHz band, to less than 10 dBm average EIRP and 13 dBm peak EIRP.[47] Google has observed that the high power allowed in this 500-megahertz band would be useful to

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[39] *See Revision of Part 15 of the Commission's Rules Regarding Operation in the 57-64 GHz Band*, Third Report and Order, 13 FCC Rcd 15074 (1998). The current rule's provision allowing the FDS move within the fixed equipment would support, for example a piece of large-scale industrial machinery located on a factory floor. *See* 47 CFR § 15.255(a)(2).

[40] *NPRM*, 36 FCC Rcd at 1197-18, para. 37 (proposing to retain Section 15.255(c)(2) but also seeking comment on whether this provision should be expanded to apply to both fixed and mobile FDS applications).

[41] Amazon Comments at 11; *See also, e.g.*, Auto Innovators Comments at 5; TI Reply Comments at 3.

[42] Vayyar Comments at 6-7.

[43] Google Comments at 23-24.

[44] Bosch Comments at 8.

[45] As described *infra*, we provide an option for use of the 57-64 GHz band under specified technical criteria, limited to fixed outdoor operations or vehicular applications. We believe that the use cases are sufficiently discrete and clear in their application that they can be codified within Section 15.255(c)(2)(iii) without further defining the difference between "mobile" and "fixed".

[46] This band is also an Industrial, Scientific and Medical (ISM) frequency band. 47 CFR § 18.301.

[47] 47 CFR § 15.255(c)(2). This special provision was added in 1997 in *Amendment of Parts 2, 15, and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications*, ET Docket No. 94-124, FCC 87-267, Memorandum Opinion and Order and Fourth Notice of Proposed Rulemaking, 12 FCC Rcd 12212 (1997).

FDS using narrow bandwidth applications, and the Industry Consensus Agreement recommends retaining the existing power levels permitted in the 61.0-61.5 GHz band while opening the band to mobile applications. Applying our decision to this band, we remove the "fixed" restriction applicable to FDS operation in section 15.255(c)(2). This is consistent with our intention to permit both fixed and mobile applications to be deployed within the entirety of the 60 GHz band.

23. *Removal of the SRIMS Designation*. Consistent with our decision to permit fixed and mobile radars to operate throughout the 60 GHz band, we adopt the proposal to remove the term "short-range interactive motion sensing" (SRIMS) from the rules. We acknowledge that there has been much confusion on which 60 GHz mobile and fixed radar applications qualify under the SRIMS designation,[48] and note that commenters unanimously supported the removal of the SRIMS terminology from the rules.[49] Because the FDS rules we are adopting herein will apply to all manners of fixed and mobile technologies operating under section 15.255, and because the SRIMS designation was crafted for a limited type of mobile radar (i.e., short-range motion sensing radar), it is no longer necessary. Accordingly, we remove this designation and associated relevant requirements from the rules.

B. Expanded Use of FDS Devices Operating in the 57-64 GHz band

24. In response to notice that the Commission was considering rules that would promote co-existence between communication devices—especially new immersive technologies[50]—and FDS/radars in the 60 GHz spectrum, the record reflects the disagreements, debates, and ultimate consensus opinions that arose between communications and radar proponents. The rules we are adopting balance the abilities of radar and communication devices to access the same spectrum. We adopt a band plan and associated technical rules that arise from the Commission's original proposals and accounts for the results of a multi-month negotiated agreement between major parties within both the communications and the radar industries, and that no party has opposed.[51]

25. Under our revised section 15.255 rules, which are set forth in Appendix B, we permit the following for FDS devices: (1) up to 20 dBm peak EIRP for indoor operation, and up to 30 dBm peak EIRP for outdoor operation, including all vehicular applications, within the 57.0-59.4 GHz band; (2) up to 3 dBm peak EIRP for all operations within the 57.0-61.56 GHz band; (3) up to 20 dBm peak EIRP for all operations within the 57.0-61.56 GHz band subject to a 50% duty cycle;[52] (4) up to 14 dBm peak EIRP for all operations within the 57-64 GHz band subject to a 22.7% duty cycle;[53] and (5) up to 20 dBm peak

[48] Many of the waiver requests filed with the Commission for higher power operation in section 15.255 argued that their devices are SRIMS to avoid asking for waiver of the definitional scope in 47 CFR § 15.255(a)(2), which prohibits mobile radars that do not qualify as SRIMS. *See, e.g.*, *Valeo North America, Inc. Waiver Request*, ET Docket No. 20-121 (filed Mar. 31, 2020). We note that while the waivers focused on in-vehicle radar applications, the rules adopted herein will enable various radar applications, including other vehicular applications, such as the Garmin's bicycle radar intended to detect objects in the rear of the bicycle to improve bicyclist safety. *See* Garmin *ex parte* (filed Sept. 26, 2022).

[49] Vayyar Comments at 6, TI Comments at 5, Infineon Comments at 11, Google Comments at 10-12, Amazon Comments at 11.

[50] Immersive technologies create distinct experiences by merging the physical world with a digital or simulated reality. This is achieved by either using the technologies of Head-Mounted Display (HMD) or multiple projections.

[51] Auto Innovators and Robert Bosch LLC are two parties outside of the signatories to the Agreement that have expressed support for the Industry Consensus Agreement. Auto Innovators *ex parte* at 2 (filed Apr. 3, 2023); Robert Bosch LLC *ex parte* (filed Apr. 13, 2023).

[52] Specifically, the sum of continuous transmitter off-times of at least two milliseconds (ms) shall equal at least 16.5 ms within any contiguous interval of 33 ms.

[53] Specifically, the sum of continuous transmitter off-times of at least two ms shall equal at least 25.5 ms within any contiguous interval of 33 ms.

EIRP for fixed outdoor operations or vehicular applications (except in-cabin vehicular use cases)[54] within the 57-64 GHz band subject to a 50% duty cycle.[55] In addition, for FDS devices that have a maximum pulse duration of 6 ns, we permit the following: a) the average EIRP shall not exceed 13 dBm and the transmit duty cycle shall not exceed 10% during any 0.3 μs time window; b) the average integrated EIRP within the frequency band 61.5-64.0 GHz shall not exceed 5 dBm in any 0.3 μs time window; and c) peak emissions shall not exceed 20 dB above the maximum permitted average emission limit applicable to the equipment under test. We address unlicensed device use while airborne separately in Section III C, *infra*. The adoption of the above technical rules is supported by two industry joint agreements, the Industry Consensus Agreement and the Pulse Radar Joint Agreement which are discussed in greater detail, below. We find that these different EIRP limits and the respective associated band segmentations along with the different duty cycle limits would provide expanded opportunities for various use cases based on radars' bandwidth usage while ensuring successful co-existence with other users of the band. This approach, proposed by the industry agreements, effectively improves on our simpler approach of having a single EIRP limit across the entire band as proposed in the *NPRM*. We note that these EIRP limits are lower than the limits permitted to general communication devices in the band.[56]

1. Consensus Agreements

26. *Industry Consensus Agreement.* The February 27, 2023 Industry Consensus Agreement represents a significant breakthrough, as it resolves longstanding disagreements among various industry segments regarding equitable spectrum access.[57] The Industry Consensus Agreement represented by radar proponents (Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Texas Instruments Incorporated and Vayyar Imaging Ltd.) and unlicensed communications proponents (Intel Corporation, Meta Platforms

[54] In the Industry Consensus Agreement, the parties described "[f]ixed operation" under this use case as applying to temporarily or permanently fixed operations. Vehicular uses include operations where the device is installed within or on the exterior of a vehicle intended for outdoor use (such that any indoor use is incidental – for example, an automobile in a parking garage) but excludes all in-cabin applications or operations. Industry Consensus Agreement at fn. 4. We note that in a subsequent *ex parte* filing, these parties advocated for an expansive interpretation of the "vehicular" concept that would apply to a broad range of vehicles intended for outdoor use to encompass "…any platform that is used to perform specific tasks of moving something or someone…." Joint *ex parte* from Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Texas Instruments Incorporated, Vayyar Imaging Ltd., Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated) (filed May 10, 2023). We agree that a broad interpretation of "vehicle" consistent with this filing is warranted as it will help promote the development of a wide range of beneficial applications, and direct staff to provide appropriate guidance in this regard (such as it has done in the context of the Part 95 rules, as cited by the parties). However, because many of the "vehicles" the parties cite in their letter could be designed to operate indoors in a more-than-incidental manner in some configurations, we decline to list them as specific examples in our rules or text as suggested by the parties.

[55] Specifically, the sum of continuous transmitter off-times of at least two ms shall equal at least 16.5 ms within any contiguous interval of 33 ms.

[56] Communication devices in the 57-71 GHz band are allowed up to 85 dBm peak EIRP in fixed point-to-point applications and up to 43 dBm peak EIRP in general multi-point networking applications. *See* 47 CFR §§ 15.255(c)(1)-(c)(2).

[57] The agreement is summarized in Appendix D, Table 1, Industry Consensus Agreement, *infra*.

Inc.[58] and Qualcomm Incorporated), all of whom have been active participants throughout the course of the rulemaking proceeding, represents a viable compromise that has support from both interest groups.[59]

27. The Industry Consensus Agreement proposes "soft segmentations" of the 57-64 GHz band that follows the WiGig channelization scheme to promote communications devices' access to an alternative channel if a radar device is transmitting on the remaining channel(s).[60] The Industry Consensus Agreement also proposes long periods of radar transmission off-times (at least 2 ms in duration) under certain parameters to permit communications devices' necessary access to the same spectrum, thus resolving one of the more highly contested issues within this proceeding—whether and for how long the rules should require FDS devices to adhere to specific time periods of non-transmission. Finally, the Industry Consensus Agreement proposes different EIRP limits in different sub-bands to further ensure successful co-existence between FDS and communications devices while allowing varying EIRP levels necessary to successfully provide different radar applications in each sub-band.

28. The Industry Consensus Agreement responds to the *NPRM* by proposing more expansive radar operations in portions of the 57-64 GHz band than the Commission proposed, while explaining how the Commission can still meet its goal of ensuring fair sharing with communications operations. For example, the proposal allows radars with 2-gigahertz bandwidth (operating in the 57.0-59.4 GHz band) to transmit at 20 dBm peak EIRP without any transmitter off-time limitations. In place of the prior 2 ms minimum radar transmitter off-time requirement imposed in multiple waivers approved in July 2021,[61] the Industry Consensus Agreement allows FDS/radar devices with 4.5-gigahertz bandwidth (operating in the band 57.0-61.56 GHz) and 7-gigahertz bandwidth (operating across the entire 57-64 GHz band) to operate with transmission bursts that occupy 50% and 22.7% of the airtime, respectively, but requires the FDS devices to implement continuous silent intervals to prevent non-stop radar transmissions bursts that could severely impact communications devices' latency, as described in the record of this proceeding, *supra*.[62]

29. *Pulse Radar Joint Agreement.* Acconeer, the primary proponent for 60 GHz pulse radar technologies in our record, engaged in lengthy discussions with major communications device proponents represented by Intel, Meta Platforms and Qualcomm to develop technical parameters particular to pulse radars to enable successful co-existence in the 57-64 GHz band. On November 10, 2022, these parties responded to the Commission's *NPRM* by submitting the Pulse Radar Joint Agreement that sets forth specific technical parameters applicable to pulse-style radars that are distinct from those submitted by the Industry Consensus Agreement, and requests that we adopt these parameters into the rules.[63]

30. As described *supra*, pulse radars typically transmit nanosecond-long pulses that instantaneously spread across the wide intended band. Pulses are emitted in sweeps and multiple sweeps constitute a frame. Acconeer describes that its "pulse radar transmits in short nanosecond-long pulses that

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[58] Meta is the new name for Facebook, effective Dec. 1, 2021. Facebook submitted comments in this proceeding under the name Facebook Inc. up to and including the year 2021. All Facebook comments were submitted subsequently under the new name Meta Platforms Inc.

[59] Industry Consensus Agreement from Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Intel Corporation, Meta Platforms Inc., Qualcomm Incorporated, Texas Instruments Incorporated, and Vayyar Imaging Ltd. (filed Feb. 27, 2023).

[60] The 60-64 GHz band partitioning for UA is discussed separately in Section III C.1, *infra.*

[61] *See supra* n.18 (describing these waivers).

[62] *See ex parte* from Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated (filed May 31, 2022 and Aug. 19, 2022).

[63] Joint *ex parte* from Acconeer, Intel, Meta Platforms and Qualcomm (filed Nov. 10, 2022) (Pulse Radar Joint Agreement). The Industry Consensus Agreement states that its proposed regulatory framework is independent of the technology used by a radar system and is meant to be complementary to the Pulse Radar Joint Agreement and not an alternative to it. Industry Consensus Agreement at fn. 3. The agreement is summarized in Appendix D, Table 2, Pulse Radar Joint Agreement, *infra*.

can co-exist with [IEEE] 802.11ad/ay [compliant devices] with low impact on throughput, as the error correction coding of the communication systems are able to cope with the pulse radar in the channel, even under extreme signal-to-interference ratio (SIR)" conditions unlike other types of radar devices using different coding schemes, such as FMCW radars, "which perform sweeps continuously during tens of microseconds to tens of milliseconds, making it difficult for [IEEE] 802.11ad/ay [compliant] systems to rely on error correction coding to maintain a high data rate during the slot occupied by the FMCW radar."[64] Acconeer further explains that the peak power spectral density for its pulse radar, as measured over an IEEE 802.11ad/ay device's communication channel, is significantly lower than FMCW radars, which decreases potential harmful interference decreasing the likelihood that the listen-before-talk (LBT) mechanism of the IEEE 802.11ad/ay compliant system less will be triggered.[65] Acconeer thus believes that its pulse radar technology, which uses spread spectrum techniques over a wide bandwidth, necessitates different provisions from what may be appropriate for other types of radar technologies.[66]

31. *Discussion.* We find that the technical proposals included in the Industry Consensus Agreement in response to those on which the Commission sought comment provide a reasonable compromise that is well suited to foster our fundamental goal of opening the 60 GHz spectrum to innovative applications while promoting successful sharing between communications and FDS technologies. The Industry Consensus Agreement offers a path for realizing the band's potential to host a wider range of unlicensed users without increasing the risk for harmful interference to authorized users of the band. We note that parties outside of the signatories to the Agreement, including the Auto Innovators and Robert Bosch LLC have expressed support for the Industry Consensus Agreement.[67] Moreover, because the Industry Consensus Agreement was the product of negotiations between leading stakeholders with interests in both radar and unlicensed communications devices, on balance, the economic benefits experienced by band users will outweigh economic costs. Accordingly, our final rules draw favorably from this filing.

32. While the *NPRM* made a specific proposal for expanding the use of the band for FDS use, it also sought comment more broadly on rules that would enable the successful sharing between FDS and communications uses. For example, the *NPRM* proposed to expand FDS operations in the 57-64 GHz band, but alternatively sought comment on allowing the FDS operations across the entire band or some other segment.[68] The *NPRM* proposed that FDS devices be limited to 20 dBm average EIRP while also seeking comment on permitting up to an average power of 40 dBm EIRP and on specifying a peak power rather than an average power.[69] The *NPRM* proposed FDS devices be limited to a duty cycle of 10% based on a maximum 3.3 ms transmission time in every 33 ms interval but also discussed the concerns parties have expressed with the proposed duty cycle and timeframe.[70] The *NPRM* also sought comment on frameworks suggested by the 60 GHz Coexistence Study Group which included taking a channelization approach to radars in the 60 GHz band and having different operating parameters for

[64] Acconeer Comments at 12.

[65] Acconeer Comments at 14.

[66] Acconeer Reply Comments at 8.

[67] Auto Innovators *ex parte* at 2 ("the [Industry Consensus Agreement] will help the auto industry to meet its commitment to make rear seat reminder systems standard equipment on almost all passenger vehicles sold in the United States by the 2025 model year") (filed Apr. 3, 2023). Robert Bosch LLC *ex parte* ("believes that the proposed rules in the 60 GHz band without timing constraints will enable the deployment of in-vehicle sensing functions which will coexist with other unlicensed users…") (filed Apr. 13, 2023).

[68] *NPRM*, 36 FCC Rcd at 11909, para. 19; *id*., at 11909-10, para. 22.

[69] *NPRM*, 36 FCC Rcd at 11910, para. 24; *id*., at 11913, para. 29; *id.*, at 11918-19, para. 38.

[70] *NPRM*, 36 FCC Rcd at 11913-14, paras. 30-31.

radars when they are operating in a vehicle, indoors, or outdoors, or between implementations that are fixed, mobile, or portable.[71]

33. To facilitate use by all technologies, we agree with Acconeer that because pulse radars necessitate wide bandwidths to accommodate their spread spectrum technique, we must also consider rules that are not solely predicated on using the small partitioned bands outlined in the Industry Consensus Agreement. Although Acconeer appears to be the only pulse radar provider that participated in this proceeding, many commercial parties plan to incorporate the Acconeer pulse radar chip into their finished products and other manufacturers may have plans for similar systems, thus making it likely that pulse FDS devices will see widespread use in the 57-64 GHz band.[72] By adopting technical parameters that are compatible with the Pulse Radar Joint Agreement, we will further enhance the potential for innovative product deployments in the 60 GHz spectrum without increasing the potential for causing harmful interference to authorized users. Because the Pulse Radar Joint Agreement represents the interests of proponents of pulse radar and leading communications device stakeholders, on balance, the economic benefits experienced by band users will outweigh economic costs. Accordingly, the rules we are adopting also recognize the approach set forth in the Pulse Radar Joint Agreement.

2. Technical Considerations

34. *Frequency range.* In the *NPRM*, based on the parameters in the multiple waiver grants that pertain to FDS use of the 60 GHz band, the Commission proposed to limit operation of FDS devices operating under the proposed rules to the 57-64 GHz band to be consistent with the European ETSI Harmonized Standard EN 305 550 that restricts short-range devices, e.g., radars, to the 57-64 GHz band.[73] While the Commission proposed to retain FDS operation in the 64-71 GHz band at the existing low-power limits in the rules, it sought comment on allowing use across the entire 57-71 GHz frequency range at higher power limits in conjunction with a specified duty cycle.[74] In addition, in the *NPRM*, the Commission noted the work of the 60 GHz Co-existence Study Group on developing "a consensus approach" to a suitable co-existence framework, with discussions concerning duty cycles; transmission on- and off-times; operating bandwidth and channelization.[75]

35. Initially, interested parties were unable to achieve consensus on what frequency range would be most appropriate for expanded FDS use. For instance, Google suggested that limiting operating frequencies for FDS devices to the 57-64 GHz band, consistent with the EN 305 550 standard, would reserve the upper 7 gigahertz of the band for future potential use cases,[76] while both Acconeer and Amazon supported extending the proposed higher power limits to the entire 14-gigahertz spectrum in the 57-71 GHz band to promote more FDS deployment.[77] Other parties addressed potential harmonization benefits in use of the 57-64 GHz band,[78] and suggested that minimizing the level of interference from FDS devices used outdoors in hand-held devices would be useful to facilitate compatibility with future

[71] *NPRM*, 36 FCC Rcd at 11915-16, para. 33.

[72] *See e.g.*, ITEM Inc. Comments, BrainLit AB Comments, RelyQ LLC Comments, NEXTY Electronics Corporation Comments, Väderstad AB Comments, Restar Electronics Americas Inc. Comments, Trickle Star Inc. Comments.

[73] Under ETSI, short-range devices (SRD) have a low risk of causing harmful interference to other radio services, usually because their transmitted power, and hence their range, is low.

[74] *NPRM*, 36 FCC Rcd at 11909-10, paras. 21-22.

[75] *NPRM*, 36 FCC Rcd at 11915-16, para. 33.

[76] Google Comments at 14.

[77] Comments of Acconeer at 20, Amazon at 3-4.

[78] Valeo Comments at 6.

generations of point-to-point radios that are expected to feature the band segment.[79] To protect communications devices' ability to access the spectrum amidst radars' repetitive transmission bursts, a Joint Comment from Intel Corporation, Meta Platforms Inc. and Qualcomm Incorporated proposed that FDS devices limit their operating bandwidth to certain partitions of the 57-64 GHz band if using higher power levels and subject to strict duty cycles.[80] The radar industry initially opposed this approach.[81]

36. Ultimately, parties representing both FDS and communications interests found common ground in a soft segmentation approach to the 57-64 GHz band. As discussed above, the Industry Consensus Agreement proposes three segments within the 57-64 GHz band, corresponding respectively to WiGig Channel 1 (57.0-59.4 GHz), WiGig Channels 1-2 (57.0-61.56 GHz), and WiGig Channels 1-3 (57-64 GHz).[82] The Pulse Radar Joint Agreement also envisions use of the 57-64 GHz band, but under separate provisions designed to accommodate the technical characteristics of pulse radars, as discussed *supra*.[83] Adopting rules for use of the 57-64 GHz band that account for the existing WiGig channelization plan is preferable to the initial *NPRM* proposal because it provides a level of compatibility among unlicensed device types without imposing uniformly low power levels and band-wide duty cycle limitations that parties indicated would retard continued use and development of the band.[84] Therefore, we are adopting the soft segmentation plan as specified in the Industry Consensus Agreement and the technical parameters for pulse radars as specified in the Pulse Radar Joint Agreement.

37. *EIRP Limits.* In the *NPRM*, the Commission proposed allowing FDS devices to operate at no more than 20 dBm average EIRP and asked parties that opposed those limits to propose appropriate parameters.[85] This proposed EIRP limit is higher than the existing limit in the rules which permits fixed FDS devices to operate at no more than 10 dBm peak EIRP and is also higher than the level requested in the multiple waivers that were granted,[86] but is consistent with ETSI EN 305 550. All of the granted waivers permit operation at 13 dBm peak EIRP to provide greater accuracy and finer resolution imaging than the 10 dBm permitted in the rules. The waiver requesters argued that such higher power is necessary to achieve the necessary accuracy needed to detect small-size targets due to poor signal-to-noise ratio conditions.[87] For example, these radars are intended to detect movement or objects in the sub-millimeter

[79] WISPA Comments at 10.

[80] *See ex parte* from Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated (filed Aug. 19, 2022) ("proposing the following 3 operating modes: (a) a radar operating within the 57.0-59.0 GHz band may use up to 20 dBm peak EIRP, 13 dBm/MHz peak EIRP PSD, and without any duty cycle restriction; (b) a radar operating within the 57.0-61.5 GHz band may use up to 13 dBm peak EIRP, 13 dBm/MHz peak EIRP PSD, and a 10% duty cycle in every 33 ms interval; additionally, the radar operating with the 57.0-61.5 GHz band must include at least X ms of continuous silent time in every 2X ms interval, where X is between 2 and 10 ms; and (c) a radar operating within the 57-64 GHz band may use up to 13 dBm peak EIRP, 13 dBm/MHz peak EIRP PSD and a 10% duty cycle with at least 26.4 ms of continuous silence time in every 33 ms interval.").

[81] *See ex parte* from radar companies represented by Amazon.com Services LLC, Continental Corporation, Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., and Texas Instruments Incorporated (filed Aug. 3, 2023). *But see* Robert Bosch LLC *ex parte* (filed Jan. 30, 2023) (proposing that we allow FDS to operate without any duty cycle restriction in the 57.24-61.56 GHz portion of the band, representing the first two WiGig channels).

[82] A fourth partitioning (60-64 GHz) is also proposed specifically for operation on-board unmanned aircraft. This is further discussed in Section III C.1 On-board Aircraft Operation, *infra*.

[83] *See* discussion in para. 33, *supra*.

[84] The soft band segmentation framework is derived from the work started by the 60 GHz Co-existence Study Group. *See NPRM*, 36 FCC Rcd at 11915-16, para. 33.

[85] *NPRM*, 36 FCC Rcd at 11910, para. 24.

[86] All the 60 GHz waiver requests asked for 13 dBm EIRP, which is the same level we granted in the *Google Waiver*.

[87] *NPRM*, 36 FCC Rcd at 11910, para. 23.

range such as the breathing patterns of a child in a car seat,[88] or as in the case of Leica Geosystems AG, thin cables as small as 2.5 mm in diameter.[89]

38. Radar proponents strongly supported the proposed 20 dBm average EIRP power limit, claiming it is needed to provide the range and sensing detail necessary for many applications, including those that support health and safety.[90] In addition, many of these parties submitted technical studies purporting to demonstrate that radars operating at higher power than currently allowed in the rules would not cause harmful interference to communication devices in the band.[91] On the other hand, Facebook/Intel Corporation/Qualcomm Incorporated (FB *et al*) argue that radar operations at the proposed 20 dBm EIRP level greatly increase the radar device's zone of interference to communications devices and significantly increases the likelihood that multiple radar devices will interfere with communications devices, and suggested that we adopt a 13 dBm peak EIRP limit, the same as that granted in the waivers.[92] Finally, Blu Wireless opposed the Commission's proposals, arguing that regulatory changes are unnecessary because the native IEEE 802.11ad protocol can be used to perform radar sensing under the existing rules.[93] However, Google disputed that use of this standard and argued that it would produce unsatisfactory outcomes for many of the anticipated new use cases for reasons including performance, complexity and cost.[94]

39. We find that the power limits endorsed in the Industry Consensus Agreement, represents the best way forward. Initial comments demonstrated the parties' contention that the Commission's "one size fits all" approach would not result in a satisfactory product performance to support anticipated use models. We agree with the Industry Consensus Agreement that establishing power levels for each band segment of the 57-64 GHz is a better solution for fostering both unlicensed FDS and communications operations in the 60 GHz band while enabling a band sharing approach that can support the capabilities envisioned by the commenters. With respect to the Blu Wireless comments, we note that operations that were permitted under our existing rules can continue under the revised rules and parties may continue operating under the IEEE 802.11ad protocol if they choose to. However, we find that there is a strong public benefit in expanding our rules to support the many innovative applications identified by the commenters, and that setting one power limit for all applications is not necessary.[95]

40. We note that thorough technical analyses were conducted in 2022 in joint efforts by a Technical Interchange Group (TIG) between the Commission, the National Oceanic and Atmospheric Administration (NOAA), the National Aeronautics and Space Administration (NASA), the Department of the Navy, and the National Telecommunications and Information Administration (NTIA). NTIA supports the TIG's consensus conclusion that 60 GHz FDS/radars operating at ground level with the proposed power limits in the *NPRM* would not result in harmful interference to passive EESS sensors in this band

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[88] *See, e.g.*, *Vayyar Imaging Ltd. Modification of Request for Limited Waiver of 47 CFR 15.255*, ET Docket 20-15 at 4 (filed May 5, 2020).

[89] *Leica Waiver Order* FCC Rcd at 7933-7934, para. 9. *See also supra* para 8 (discussing this waiver).

[90] *See, e.g.,* Acconeer Comments at 2; Amazon Comments at 2; Infineon Comments at 7.

[91] *See, e.g.*, Acconeer Comments at Appendix A; Infineon Reply Comments at Appendix A and Enclosure; Google Comments at Appendices A-G; Peraso Reply Comments.

[92] FB *et al* at 15. *See also* Intel/Meta Platforms/Qualcomm (Intel *et al*) *ex parte* (filed Feb 16, 2022).

[93] Blu Wireless comments at 4-5. *See also* "IEEE Draft Standard for Information Technology-Telecommunications and Information Exchange Between Systems - Local and Metropolitan Area Networks-Specific Requirements Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications-Amendment 2: Enhanced Throughput for Operation in License-Exempt Bands Above 45 GHz," *in IEEE P802.11ay/D7.0*, pp.1-784, Dec. 11, 2020.

[94] Google Reply Comments at 7-8.

[95] *See* discussion in para. 25, *supra*.

because of the high level of atmospheric attenuation that exists between transmitters on the surface of the Earth and the passive sensors in this frequency band.[96] We observe that in the *NPRM*, we proposed a limit of 20 dBm *average* EIRP without any limit on the peak EIRP, but sought comment on whether requiring a peak power limit might be necessary.[97] The technical parameters adopted herein place a limit on the peak EIRP, which is a more stringent requirement that enhances the protection of authorized services and minimizes any potential risk that these operations would cause instantaneous harmful interference. Therefore, we are adopting the EIRP limits provided by Industry in the Industry Consensus Agreement and consistent with the analysis provided by the TIG.

41. *Duty Cycle Limit.* One area of particular contention throughout the proceeding has been whether, where, and how to impose a duty cycle limit on FDS operations. There are two components to the duty cycle, the percentage or ratio of the time during which the transmitter is active versus the time during which there is no transmission and the total period or reference interval during which this ratio is considered.[98] The Commission proposed to require the same 10% duty cycle restriction associated with the multiple waiver grants[99] based on a maximum 3.3 ms total transmission time in every 33 ms interval (which was derived from Google's 2018 final agreement with stakeholders from the WLAN communications industry whose technology operates in the 60 GHz spectrum), and sought comment on whether that or some other duty cycle would be most appropriate.[100]

42. Radar proponents opposed a duty cycle requirement for FDS operations, stating that it would unnecessarily constrain the radars sensor's capabilities.[101] Parties further claim that limiting transmission time to a maximum of 3.3 ms in every 33 ms interval would be problematic for radars, because isochronous chirp transmission is essential to attain proper measurements.[102] Infineon states that relaxing the 10% duty cycle imposed in the waiver orders would allow the use of more transmit (TX) antennas (generating more virtual antennas) with the same number of chirps for each TX antenna, which in turn would allow higher angular resolution, improving and expanding the radars applications that can be provided in automotive, residential, business, and industrial contexts.[103]

43. On the other hand, FB *et al* state that even the 10% duty cycle limit on radar operations by itself does not ensure fair coexistence with communications applications, because radars operate with very short pulses (*i.e*., radar "on times") sent in rapid succession with off times that are at least 90%

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[96] NTIA *ex parte* at 1-2 (filed June 21, 2022).

[97] *NPRM*, 36 FCC Rcd at 11913, para. 29.

[98] *Duty cycle* is defined as the ratio of the time-on time of a transmitter to the sum of the time-on and time-off times; Time-on / (Time-on + Time-off). *See Book/Definitions Electrical Engineering Dictionary,* Ed. Phillip A. Laplante Boca Raton: CRC Press LLC (2000).

[99] *NPRM*, 36 FCC Rcd at 11913-15, paras. 30-32.

[100] *See ex parte* from Google LLC and Facebook, Inc., ET Docket No. 18-70 (filed Sept. 7, 2018). Google agreed to the 3.3 ms duty cycle restriction after extensive consultation with Facebook and other stakeholders, as outlined in the above filing. However, in some of the waiver requests, parties had asked for a longer transmission time frame. *See, e.g.*, Valeo Reply Comments, ET Docket No. 20-121 at 5 (rec. June 23, 2020); *Leica Geosystems AG's Request for Waiver of Part 15 of the Commission's Rules to Market a UAV Collision Avoidance Radar*, ET Docket No. 19-350 (filed Sept. 5, 2019) at 5.

[101] *See e.g.,* Acconeer Comments at 19; Amazon Comments at 8-9; IEE Sensing Comments at 6; Google Comments at 17; Husqvarna Comments at 2. *See also* Bosch Comments at 6-7 (suggesting that we increase the duty cycle limit to 50% along with average power limit specified during the transmission cycle).

[102] IEE Sensing Comments at 6. In an isochronous transmission, the sender and the receiver are synchronized in such a way that they send/receive during the same time slots.

[103] Infineon Comments at 6. *See also* Rivieh Comments (stating that a lower duty cycle (e.g., 10% at 33ms intervals) may be adequate for short-range motion detection use cases, but it is insufficient for building automation).

longer but still unusable by communication systems.[104] These parties argue that communication system transmissions or acknowledgment messages can be either blocked or repeatedly interrupted and corrupted by radars operating with short transmission gaps.[105] The communications proponents advocated for a duty cycle restriction in conjunction with a limit on the duration between radar chirps/pulses (minimum transmitter off-time, discussed *infra*) to allow for sufficient silent periods during which the spectrum may be accessed—or re-accessed—by communication devices.

44. In the *NPRM*, the Commission also observed that certain parties had recommended modifying the duty cycle restriction adopted in the waivers to read that "any radar off-time period between two successive radar pulses that is less than 2 ms shall be considered 'on time' for purposes of computing the duty cycle."[106] These parties expressed concern that the duty cycle requirement in the waivers, if expanded to the rules, would not promote coexistence with communications operations, including immersive augmented reality/virtual reality/extended reality (AR/VR/XR) applications,[107] which require very high data throughput and very low latency.[108] In their comments, radar interests claimed that such a rule would impair radar deployment and prevent their ability to meaningfully operate in the band.[109] FB *et al* offered a contrasting perspective, arguing that communication transmissions or acknowledgment messages would either be blocked or repeatedly interrupted if such a standard is not adopted.[110] They claim that under a 10% duty cycle requirement, radars transmitting short bursts of micro/nano-second durations followed by similarly short silent periods during the entire total 33 ms interval would result in too short of a quiet interval for 60 GHz immersive virtual reality communication devices to effectively access the spectrum—even though such radars would be in technical compliance with the rules.[111] This outcome would be especially harmful for the virtual-reality-enabled headsets and eyewear and other real-time audiovisual applications anticipated for 57-64 GHz band, due to the strict latency they need to operate successfully.[112]

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[104] FB *et al* Comments at 13.

[105] *Id.* at 12-13.

[106] *NPRM*, 36 FCC Rcd at 11914, para. 31.

[107] *Augmented Reality* (AR) is the digital creation of a fabricated set of objects that can be interspersed with real world elements, usually through a headset that overlays the objects on the lens, as the user also views their real surroundings. *Virtual Reality* (VR) is the digital creation of a fabricated immersive world, typically via a headset technology, that generates all the photons that the eye sees. *Extended Reality* (XR) refers to all real-and-virtual combined environments and human-machine interactions generated by computer technology and wearables. *See, e.g.,* Y. Ghasempour, C. R. C. M. da Silva, C. Cordeiro and E. W. Knightly, "IEEE 802.11ay: Next-Generation 60 GHz Communication for 100 Gb/s Wi-Fi," in *IEEE Communications Magazine*, vol. 55, no. 12, pp. 186-192, Dec. 2017.

[108] *Throughput* is the rate of successful message delivery over a communication channel. *Latency* refers to how much time it takes for a signal to travel to its destination and back.

[109] *See, e.g.*, Google Comments at 17; Husqvarna Comments at 2; Valeo Comments at 8-9; Vayyar Comments at 6; TI Comments at 11.

[110] FB *et al* Comments at 12-13. Immersive virtual reality is a technology that aims to completely immerse the user inside the computer-generated world, giving the impression to the user that they have "stepped inside" the synthetic world. This is achieved by either using the technologies of Head-Mounted Display (HMD) or multiple projections. HMD allows VR to be projected right in front of the eyes and allows users to focus on it without any distraction.

[111] *Ex parte* from Facebook, Inc., Intel Corporation, and Qualcomm Inc. in ET Docket No. 21-48 at 2 (filed May 10, 2021). *See also*, FB *et al* Comments at 13.

[112] Intel *et al ex parte* at 3 (filed Aug. 19, 2022). *See* Intel *et al ex parte* filings (filed Feb. 18, 2022 and May 2, 2022) (documenting testing purporting to show how a radar transmission can affect the latency of a virtual reality communications receiver).

45. Based on the record, we conclude that a uniform duty cycle requirement as proposed in the *NPRM* will not promote our interest in expanding the types of unlicensed devices that are able to operate in the 60 GHz band. Both radar and communications interests offer convincing reasons why adopting such a requirement could jeopardize their ability to make productive use of the band. Instead, we note that the Industry Consensus Agreement provides for frequency band segmentation along with associated EIRP levels and duty cycle/radar transmission off-time solutions that resolves the parties' previous impasse. With respect to pulse radar operations, the duty cycle expressed in the Pulse Radar Joint Agreement provides similar assurances to all parties. Because this duty cycle satisfies the goals we have in this proceeding, we are adopting rules consistent with the provisions of those agreements.[113] Finally, we recognize that the final rules we are adopting do not follow the duty cycle requirements associated with the ETSI standards.

46. *Transmitter Conducted Output Power Limit*. In the *NPRM*, the Commission proposed to allow a maximum (peak) conducted output power for FDS devices, consistent with the waivers the Commission had already granted in the band, but also asked whether a transmitter conducted output limit was necessary for 60 GHz transmitters, including communications and radar devices.[114] It also sought input on whether the Commission should consider adopting an average transmitter conducted output power limit and what impact this would have on the different types of FDS devices (e.g., FMCW, pulse, etc.) envisioned for the band.

47. We find that, based on the technical analyses submitted into the record,[115] radars operating in this band typically use a relatively wide antenna beamwidth[116] to detect scattered small objects and fine movements (e.g., chest movements on a patient, hand gestures, obstructive objects, etc.). We agree with Valeo[117] and Vayyar[118] that modern chip technologies for 60 GHz devices incorporate antenna arrays such that the transmitter output port is difficult to access and thus output power is difficult to directly measure. In such cases, transmitter conducted output power limits are typically calculated for compliance purposes based on the applicant's provided antenna gain information, thereby making such a requirement difficult to enforce. We also observe that the Industry Consensus Agreement suggests completely removing the conducted output power limit from FDS devices operating in specific segments of the 57-64 GHz band.[119] We note that the rules must address use cases that involve FDS devices that employ wide beamwidth antennas over the entire 57-71 GHz band, in addition to those FDS devices that limit their operation to certain portions of the band. For these reasons, we decline to specify a conducted output power limit in the rules we are adopting for frequency-segmented FDS devices[120] but, to limit potential harmful interference, are continuing to maintain the conducted output power limit for devices that operate over the entire 57-71 GHz band. Similarly, we decline to adopt an antenna gain requirement

[113] *See* para. 25, *supra* for a description of the duty cycle requirements for each band segment.

[114] *NPRM*, 36 FCC Rcd at 11911-12, para. 26.

[115] *See e.g.*, *FMCW Radar Interference with WiGig Communication Devices* from Peraso/Texas Instruments (filed Oct 15, 2021); Google Comments at Attachment A; Acconeer Comments at 30-39; Texas Instruments Comments at 6-8; *ex parte* from Qualcomm, Meta and Intel at 21-30 (filed Feb. 18, 2022).

[116] Typically, this is 6 dBi or less, according to the radar technical analyses submitted into the record. In contrast, 60 GHz communications devices use up to 13-52 dBi antenna beamwidths. *See* 47 CFR § 15.255(c)(1).

[117] Valeo Comments at 7.

[118] Vayyar Comments at 8.

[119] However, the Industry Consensus Agreement would maintain the existing rules for FDS devices operating across the entire 57-71 GHz band (i.e., -10 dBm peak conducted output power and 10 dBm peak EIRP). *See ex parte* from Intel, Qualcomm and Meta at 1 (filed May 2, 2023).

[120] The potential for causing harmful interference is essentially driven by the maximum EIRP in the direction of the victim receiver. Because radars generally use highly directional antennas, basing rule compliance on an EIRP measurement is more appropriate and efficient than a conduced power measurement.

for FDS devices in lieu of a conducted power limit as such a requirement would result in more complex measurements.

48. *Power Spectral Density Limit.* The existing rules do not restrict the power spectral density for 60 GHz devices. In the *NPRM*, the Commission proposed to require a 13 dBm/MHz EIRP power spectral density on FDS devices, to be consistent with the ETSI limit.[121] This is the same restriction placed on Google and other parties operating FDS devices pursuant to Commission-issued waivers. However, the Commission sought input on the ramifications of not adopting a PSD limit, and instead, relying on the EIRP limits to avoid harmful interference. We note that a power spectral density limit is not well matched to the nature of radar transmissions– which are in bursts, or chirps. Accordingly, we find that adopting a power spectral density limit is unnecessary. Commenters have pointed out that while the Commission proposed such a limit with the primary intent to be consistent with ETSI, subsequent changes in the EU regulations have made our proposal incompatible with that standard.[122] We also agree with Google[123] that a power spectral density limit may be too restrictive for certain radar use cases with narrow bandwidths. We therefore will not adopt this requirement into the final rules.

49. *Use of Spectrum Sensing Technologies.* Although the Commission did not suggest allowing FDS operation at the proposed higher power limits throughout the entire 57-71 GHz band in the *NPRM*, it noted that the Technical Advisory Committee (TAC) suggested the possibility of allowing radars that incorporate a sensing technology such as listen-before-talk (LBT) to operate at the same emission limits as WLAN devices in the band, i.e., 40 dBm EIRP and 27 dBm transmitter conducted output power.[124] Commenters had different reactions to the concept. Acconeer, for example, argued that LBT generally does not provide efficient coexistence among different systems in high millimeter wave frequencies such as the 60 GHz band, where transmissions have high directivity.[125] WISPA further states that LBT would only complicate devices and add latency, driving up equipment costs and forcing a re-design and retrofitting of equipment already deployed in hundreds, if not thousands, of locations.[126] Other parties suggested that we could allow FDS devices to operate with power limits as high as those accorded to communication devices (i.e., up to 40 dBm EIRP) if they incorporated spectrum sharing techniques.[127]

50. Given our decision to adopt final rules as described above, we see no need to further pursue the use of spectrum sensing technologies in the 60 GHz band at this time. Nothing in our decision should be read to preclude standards bodies from developing industry voluntary standards for consideration by the Commission if they determine it is appropriate to do so.

C. Operation On-board Aircraft

51. In the *NPRM*, the Commission stated that it did not anticipate altering the existing restrictions in Section 15.255(b) of the rules relating to the use of 60 GHz band unlicensed devices on-board aircraft, but nevertheless sought comment as to whether it should expand the situations where such

[121] *NPRM*, 36 FCC Rcd at 11912, para. 27.

[122] *See* Bosch Comments at 6, referencing EC Decision 2019/1345, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D1345; *See also* IEE Sensing Comments at 8, Infineon Comments at 6.

[123] Google Comments at 16.

[124] *See 2021 TAC Recommendation*. *See also, NPRM*, 36 FCC Rcd at 11918-19, para. 38.

[125] Acconeer Comments at 24. *See also* Valeo Comments at 6 and Vayyar Comments at 7 (identifying other potential disadvantages).

[126] WISPA Reply Comments at 7. *See also* Wi-Fi Alliance Comments at 13 (agreeing that using spectrum sensing technologies in the band could create co-existence problems).

[127] Google Comments at 18; TI Comments at 14. *See also* Bosch Reply Comments at 9 (endorsing similar provisions, but only if compatibility studies yet to be conducted would produce results that indicate that LBT mitigation would be necessary).

use is permissible.[128] These restrictions prohibit operation on-board aircraft, except on aircraft that are equipped with a high RF attenuation body (e.g., commercial airliners) while forming "closed exclusive on-board communication networks within the aircraft," such as entertainment systems that deliver movies and music to passengers on-board commercial aircraft. The rule specifically prohibits 60 GHz transmitters from operating on unmanned aircraft, because these types of aircraft do not provide substantial RF shielding.[129] The Commission observed that it has only authorized 60 GHz radars to operate on board aircraft beyond the uses permitted in the rules via waiver in two limited situations in conjunction with specific use cases.[130]

1. Operation on-board unmanned aircraft (UA)

52. In its comments, Amazon requests that the final rules allow FDS device use cases on board aircraft in the 60-64 GHz segment of the 60 GHz band for unmanned aircraft.[131] Amazon states that it would like to deploy 60 GHz radar on unmanned aircraft (UA) for obstacle avoidance and situational awareness similar to the use cases we have previously permitted via waiver to Leica Geosystems AG.[132] Amazon states that using 60 GHz radars on drones would enable it and other companies to develop and deploy Near Surround Detection (NSD) systems to enhance the drone's ability to sense and avoid persons and obstacles in and near its ascent and descent path, thereby improving aviation safety as NSD systems provide situational awareness that help prevent collisions. Amazon further claims that authorized drone operations conducted below 121.92 meters (400 feet) above ground level (AGL) in the 60-64 GHz band can coexist with, and will not cause harmful interference to, adjacent Earth-Exploration Satellite Service (EESS) and Radio Astronomy Service (RAS) operations.[133]

53. Over the course of the rulemaking, we have seen increasing interest in, and support of, Amazon's position. For instance, the General Aviation Manufacturers Association (GAMA) believes that airborne FDS radars operating in the 60 GHz band will not cause harmful interference to other spectrum users, arguing that "radar devices in this frequency range operate at a relatively low EIRP; the nearest frequency band that is used on aircraft is 24 GHz; and there is existing communications equipment using this same band at the same power where no harmful interference has been observed."[134] The Consumer Technology Association, CTIA, Information Technology Industry Council (ITI), NetChoice, TechNet and the U.S. Chamber of Commerce, in a joint comment, assert that allowing the use of this band for low-altitude drone operations would enable systems that sense and avoid obstacles and provide situational

[128] *NPRM*, 36 FCC Rcd at 11920, paras 42-43.

[129] 47 CFR § 15.255(b)(2).

[130] The two types of use cases thus far authorized are: 1) Leica Geosystems AG 60-64 GHz radar on an unmanned aircraft, but with very restrictive conditions on the number of deployed devices. *See Leica Waiver Order* FCC Rcd 7929; 2) Google Soli radar incorporated into a smartphone (e.g., the Google Pixel) allows control of a smartphone via gestures without touching the phone, and is not intended to be part of the aircraft communication network. *See Google LLC Request for Waiver of Section 15.255(c)(3) of the Commission's Rules Applicable to Radars used for Short Range Interactive Motion Sensing in the 57-64 GHz Frequency Band*, DA 18-1308, Order, 33 FCC Rcd 12542 (OET 2018).

[131] Amazon Comments at 12.

[132] *In the Matter of Leica Geosystems AG Request for Waiver of Section 15.255 of the Commission's Rules Applicable to Radars used on Unmanned Aerial Vehicles in the 60-64 GHz Frequency Band*, ET Docket No. 19-350, DA 20-795, Order, FCC Rcd 7929 (OET 2020).

[133] Amazon *ex parte* at 1 (filed Sep. 13, 2022); *id.*, at 1 (filed Nov. 1, 2022); *id*., at 1 (filed Dec. 19, 2022); *id.*, at 2 (filed Mar. 20, 2023).

[134] GAMA *ex parte* at 1 (filed Nov. 14, 2022).

awareness to develop; these parties argue that this would help enhance aviation safety and reduce the risk to both people and property on the ground and other airspace users.[135]

54. We find that the rules could accommodate 60 GHz FDS operations on UA provided that these operations are limited to the 60-64 GHz sub-band while airborne at low altitudes (less than 121.92 meters (400 feet) above ground level (AGL)) without increasing the potential for interference to authorized services in this band. As the Commission stated in the Leica Waiver Order, limiting operation to the 60-64 GHz frequency band (instead of the entire 57-71 GHz band) avoids the passive EESS band by providing a natural 700-megahertz guard band between the EESS passive service at 57-59.3 GHz and the device's operating band at 60-64 GHz, thus protecting EESS users. The Commission further stated that "[r]egarding RAS, for which there is no allocation in the 57-71 GHz band, our strict out-of-band limits in the rules already prevent any increase in potential harmful interference caused by the device's operation."[136] The Commission also observed that the high oxygen attenuation at frequencies around 60 GHz, added to the fact that the UA is mostly in motion, will serve to mitigate any potential for harmful interference to other users.[137] The Commission further noted that, because fixed outdoor point-to-point 60 GHz transmitters generally use narrow antenna beams, the likelihood that a UA equipped with a 60 GHz radar would be located within the antenna beamwidth of these transmitters is very small, thereby mitigating any potential increase in harmful interference.[138] We agree with the logic of these prior assessments, and based on the absence of interference complaints from the Leica deployments since 2020 and support in the record, we find that 60-64 GHz FDS devices can operate on UA at altitudes less than 121.92 meters (400 feet) above ground level without increasing the potential for harmful interference to authorized services We also note that the Federal Aviation Administration (FAA) part 107 rules limit operation of small unmanned aircraft to 121.92 meters (400 feet) AGL.[139] The rules we are adopting herein address the operation of unlicensed FDS devices in the 60 GHz band that may be used on UA and do not alter any obligations under applicable FAA regulations.

55. *Power Levels*. With respect to power levels for FDS devices operating on UA, we note that the Industry Consensus Agreement proposes such operations be limited to 20 dBm peak EIRP with a 50% duty cycle.[140] These EIRP and duty cycle limits are consistent with those permitted in the Leica Waiver Order, and the 60-64 GHz frequency range selected for FDS devices operating on UA avoids the EESS passive band at 57-59.3 GHz with a 700-megahertz guard band, consistent with NTIA's support of the TIG's efforts regarding FDS co-channel use of the EESS band.[141] Accordingly, we are authorizing these parameters for 60-64 GHz FDS operating on-board UA, limited to flying altitudes less than 121.92 meters (400 feet) above ground level. Operations on UA at these power levels will enable more expansive use to deliver new innovative services to the American public without increasing the potential of causing harmful interference to incumbent users.

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[135] Joint *ex parte* from the Consumer Technology Association, CTIA, Information Technology Industry Council (ITI), NetChoice, TechNet, and U.S. Chamber of Commerce (filed Dec. 16, 2022).

[136] *Leica Waiver Order*, 35 FCC Rcd at 7933, para. 7.

[137] *Leica Waiver Order*, 35 FCC Rcd at 7933, para. 8.

[138] *Leica Waiver Order*, 35 FCC Rcd at 7932, para. 6. We note that mobile use minimizes the potential for harmful interference by its very nature of moving about, whereas fixed use is more susceptible if an interferer signal is located in its antenna beam.

[139] 14 CFR § 107.51.

[140] Specifically, the sum of continuous transmitter off-times of at least two ms shall equal at least 16.5 ms within any contiguous interval of 33 ms.

[141] NTIA *ex parte* (filed June 21, 2022).

2. Operation on-board aircraft other than UA

56. As indicated above, Section 15.255(b)(2) prohibits operation on aircraft, unless the device is part of "closed exclusive on-board communication networks within the aircraft."[142] However, in 2018, the Commission waived this rule to allow the Google Soli radar incorporated into a smartphone to operate on aircraft without being part of the aircraft's communication network.[143] In the *NPRM*, the Commission noted that compliance options exist for portable electronic devices[144] that may be brought aboard airplanes; these could include, for example, requiring "airplane mode" to be activated during flight.

57. CORF argues that there is no publicly available data on the effect that 60 GHz networking devices on aircraft have on EESS remote sensing in the 57-59.3 GHz band. Therefore, CORF believes it is unreasonable to loosen the standards and allow additional devices such as 60 GHz radars on aircraft.[145] The Frequency Allocation on Remote Sensing (FARS) Committee agrees with CORF's concerns about the accuracy of Google's report on the total reflection of radar signals off of an aircraft window and the absence in Google's report of any discussion regarding the effect of radar signals reflections off of the aircraft wings,[146] and requests that we do not expand airborne use of radars.[147] Conversely, Google states that "the 2018 Google study did take the effect of radar reflections off of airplane wings into account." Google argues that the Soli radar emissions at issue in Google's study are beamed out of the front of the phone; therefore, a user would have to point the phone out of the aircraft window and downward. In such a scenario, "the user would have difficulty viewing the screen in this configuration, let alone using hand gestures to control any interaction with content on the screen."[148]

58. As indicated *supra*, NTIA supports the consensus conclusion of the TIG that the high level of atmospheric attenuation between 60 GHz FDS/radars operating at ground level and the passive EESS sensors operating in the 57.0-59.3 GHz band would not result in any harmful interference to EESS sensors in this band. However, NTIA requests that, if alternate deployment scenarios are considered in the future whereby the atmospheric absorption loss may be different (particularly, aeronautical deployments), further analysis be conducted.[149]

59. We recognize and support the vital interest in protecting the passive EESS services in the 57.0-59.3 GHz band. We also acknowledge that, consistent with NTIA's request, further analysis is being undertaken at this time by the TIG regarding the potential to deploy radars on aircraft in this band. We therefore will only allow FDS/radar operation on aircraft other than UA in the 59.3-71 GHz band at this time, limited to installations within personal portable electronic devices such as smart phones, laptop

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[142] This refers to entertainment systems that deliver movies and music to passengers on-board commercial aircraft. 47 CFR § 15.255(b).

[143] *See Google LLC Request for Waiver of Section 15.255(c)(3) of the Commission's Rules Applicable to Radars used for Short Range Interactive Motion Sensing in the 57-64 GHz Frequency Band*, DA 18-1308, Order, 33 FCC Rcd 12542 (2018).

[144] *NPRM,* 36 FCC Rcd at 11919.

[145] CORF Comments at 13.

[146] CORF Comments at 15-16.

[147] FARS Reply Comments at 1-2.

[148] Google Reply Comments at 10. The Google Soli Radar operates under waiver in the 57-64 GHz band, which includes the EESS passive 57-59.3 GHz band.

[149] NTIA *ex parte* at 1-2 (filed June 21, 2022).

computers, etc. These radar operations would not need to be part of the on-board communication system within the aircraft.[150]

D. Implementation Considerations

1. Compliance Testing

60. In the *NPRM*, the Commission proposed to exempt FMCW and other similar swept-frequency radars from the section 15.31(c) requirement to stop the frequency sweep when measuring the relevant technical parameters.[151] The Commission explained that stopping the sweep is physically impractical for most of these devices and can result in inaccurate measurements.[152] In addition, the Commission proposed to remove the section 15.255(c)(4) requirement to use an RF detector with a detection bandwidth that encompasses the 57-71 GHz frequency range for performing peak power measurements. The Commission stated that this requirement has been superseded by the more recent inclusion of section 15.255(i),[153] which sets out a flexible approach toward measurement that can be adapted more effectively as device technology and test instrumentation evolve. Finally, the Commission proposed to specify that the provision of section 15.35(c) that requires calculating average field strength over a complete pulse train or 100 ms is not applicable to pulsed or burst radars that operate in the 60 GHz band.[154] The Commission explained that this measurement requirement was originally designed for low frequency pulse-code modulated devices such as garage door openers and would not be appropriate for high frequency radars.[155]

61. Bosch proposes that instead of measuring transmitter conducted output power, the Commission should consider the equivalent requirement of the total radiated power (TRP), which may be considered and specified as described in ETSI EN 303 883-1 Version 1.2.1 clause 5.6.[156] Bosch argues that this is the only feasible option for measuring the total radiated power of FDS devices.[157] Acconeer argues that using a 20 dB bandwidth to measure wideband pulse systems is challenging, because the low spectral density is usually below the noise flow of the measurement equipment. Additionally, Acconeer proposes that the same method used for evaluating the bandwidth of ultra-wideband (UWB) devices in the 3.1-10.6 GHz band be applied to radar devices in the 60 GHz band.[158] Infineon states that, given that the goal is to establish an average EIRP for purposes of increased compatibility with other 60 GHz Band devices, and different devices may have different cycle periods, a more objective standard that is uniform over all affected radar and FDS devices is appropriate; Infineon proposes that an absolute temporal

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[150] 47 CFR § 15.255(b)(2) (operation on aircraft is permitted while airborne only in closed exclusive communication networks within the aircraft).

[151] 47 CFR § 15.31(c).

[152] An FMCW radar works by sweeping a continuous wave (CW) signal over a defined frequency range. If the sweep is stopped for a bandwidth measurement, the measured bandwidth will be that of a CW signal, which is zero.

[153] 47 CFR § 15.255(i) states "Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance."

[154] 47 CFR § 15.35(c).

[155] Garage door openers typically operate in the 300-390 MHz frequency range.

[156] Bosch suggests that the total radiated power may be measured and assessed as described in ETSI EN 303 883-1 Version 1.2.1 clause 5.6 equation 20 and figure 10. Bosch comments at 6. *See Short Range Devices (SRD) and Ultra-Wide Band (UWB); Part 1: Measurement techniques for transmitter requirements*, ETSI EN 303 883-1 V1.2.1 (2021-02), at https://www.etsi.org/deliver/etsi_en/303800_303899/30388301/01.02.01_60/en_30388301v010201p.pdf.

[157] Bosch Comments at 6.

[158] Acconeer Comments at 20.

measure be used, specifically 100 ms.[159] Valeo suggests that transmission bandwidth should be expressed as a measured occupied bandwidth. If the transmission bandwidth would be specified only by the chirp specification, it could happen that a chirp timing constraint (e.g., maximum chirp slope) may occur. Valeo suggests that the occupied bandwidth be measured, including the overshoots caused by the slew rate of the chirp and the return ramp.[160] Vayyar supports removing the requirement that the sweep is stopped during parts of the compliance testing.[161] The Auto Innovators recommend that compliance measurements should allow evaluation over at least five repetition cycles of the equipment under test (EUT), as it believes this will simplify testing.[162]

62. We find that exempting FMCW and other swept-frequency radars from section 15.31(c) is necessary for performing meaningful compliance measurements.[163] In addition, we find it appropriate to remove section 15.255(c)(4). This rule section was intended to address legacy spectrum analyzers' limited capability for measuring radar waveforms at these frequencies, which is no longer an issue with modern spectrum analyzers. Additionally, the anticipated FMCW and pulsed radar waveforms will likely exceed the 10 MHz video bandwidth specification, resulting in some degree of video averaging.[164] Further, section 15.255(c)(4) specifies that average emission measurements be performed only over a period of active transmission. Retaining such a requirement will prohibit application of a duty cycle correction in determining the average radar transmit power. Finally, we find that the provision of section 15.35(c) that requires calculating average field strength over a complete pulse train or 100 ms is not applicable to FMCW or to pulsed radar in the 60 GHz band. We disagree with Bosch's suggestion to consider TRP instead of EIRP. TRP measurements require substantial sampling over the 4π steradian space,[165] thus leading to significant complications in performing compliance measurements.[166] Furthermore, potential interference is essentially driven by the maximum EIRP in the direction of the victim, and due to the highly directional nature of radars, EIRP measurement is correspondingly a more appropriate and efficient compliance measurement. With respect to transmission bandwidth, we agree with Valeo that the occupied bandwidth be measured as part of the compliance measurements. Doing so will ensure fidelity to the requirements specified in section 2.1049 as required by section 15.201(b).[167] We disagree with Acconeer's justification for applying the same method used for evaluating the bandwidth of UWB devices to radar bandwidth measurements. UWB devices are held to a very low fundamental power level and thus warrant bandwidth measurement based upon the 10 dB down points to accommodate measurement sensitivity challenges. The higher power limits provided to 60 GHz radar will permit the measurement of occupied bandwidth, even in a radiated measurement, with adequate

[159] Infineon Reply Comments at 10.

[160] Valeo Comments at 9.

[161] Vayyar Comments at 8.

[162] Auto Innovators Comments at 3.

[163] An FMCW radar transmitter develops its emission bandwidth by sweeping over a defined set of frequencies. In order to measure the associated bandwidth, the device must sweep normally. If the sweep is stopped, then the measured bandwidth will be that of the continuous wave (CW) signal, which is theoretically zero.

[164] Section 15.255(c)(4) requires that the RF detector used for compliance measurements have a video bandwidth of at least 10 megahertz.

[165] A steradian is a unit of solid-angle measure in the International System of Units (SI), and is related to the surface area of a sphere in the same way a radian is related to the circumference of a circle.

[166] This methodology was first proposed to accommodate multi-element array antennas (i.e., massive multiple-input, multiple output (MIMO)) that can form multiple beams and employ electronic beam steering. It is a technology typically used to support point-to-multipoint operations (e.g., 5G cellular); however, the short-range radars under consideration in this rulemaking are unlikely to be using such antenna technology due to size and expense.

[167] 47 CFR §§ 2.1049 and 15.201(b).

sensitivity.

2. Operation of Equipment Subject to Prior Waivers and Transition Provisions

63. As noted above, a number of parties have been granted waivers of certain provisions of section 15.255 to permit operation of innovative radar devices in the 60 GHz band.[168] In the *NPRM*, the Commission noted that, to the extent that the rules are modified to expand unlicensed FDS device operations in the 60 GHz band, all future 60 GHz FDS operations would be conducted subject to our modified rules.[169] The Commission proposed to terminate all previously granted 60 GHz FDS waivers and FDS device manufacturers would be expected to conform their operations to our rules as revised.[170]

64. Most commenters agree that if the adopted 60 GHz technical and operational rules are more stringent than existing FDS waiver conditions, the Commission should grandfather the existing, more flexible waivers for approved radar devices or, at minimum, provide a reasonable transition period for waiver holders to bring their technology into compliance with more rigorous regulatory standards.[171] The Industry Consensus Agreement suggests a six-month transition period applicable only to new certifications under the terms of the waivers.[172] The Pulse Radar Joint Agreement suggested that Acconeer be permitted to continue to market and sell pulse radars under its existing waiver for two years after the effective date of new rules.[173]

65. We agree that it is appropriate to afford parties that are operating unlicensed 60 GHz band FDS equipment under waivers a period of time to transition to the new rules and to sell products that they have produced under the terms of their waivers, but we also want to encourage parties to begin producing equipment that complies with the new rules in a timely manner, notwithstanding whether their existing waivers are more restrictive than the newly adopted rules. The Industry Consensus Agreement shows that manufacturers are comfortable that a relatively short, six-month, period is a realistic and manageable transition time period.[174] We agree that this is an appropriate timeframe, given that it is important to begin the transition to the new rules as soon as practicable. Accordingly, in these cases where a waiver has previously been granted, we will require that all new FDS/radar devices that are approved by Telecommunication Certification Bodies (TCBs) beginning six months after the effective

[168] *See supra* para. 8.

[169] *See, e.g., 60 GHz Vehicle Radar Waiver, supra* n.131 at para. 52 ("We note that operations pursuant to the waivers we grant today are expressly conditioned on compliance with the Commission's rules except as waived, and where rules are modified as a result of any future Commission rulemaking these operations will be subject to those modified rules"); Vayyar *ex parte*, ET Docket No. 21-15 at 1 (noting that Vayyar "was fully aware of the anticipated 60 GHz rulemaking proceeding and fully understood and agreed that any waiver granted to Vayyar would be subject to future alignment with the outcome of such rulemaking") (filed June 1, 2021).

[170] *NPRM*, 36 FCC Rcd at 11908-09, para. 18.

[171] Comments from Auto Innovators at 6, Amazon at 4, Google at 24, and IEE Sensing at 12.

[172] Industry Consensus Agreement at 3.

[173] Pulse Radar Joint Agreement at 1-2. In asking for extended period, the parties stated that Acconeer's waiver "provides for more restrictive operations than the technical parameters proposed [in the Pulse Radar Joint Agreement] and is limited to certain vehicular use cases." *Id.*

[174] *See also* Joint *ex parte* from Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Texas Instruments Incorporated, Vayyar Imaging Ltd., Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated) (filed May 10, 2023). The parties, in implicitly agreeing with the Commission's assessment, suggested additional clarifications to the ordering clauses and rules appendix that we agree provide useful clarification of our intent and are therefore implementing herein.

date of the rules adopted in this proceeding must comply with the new rules.[175] We terminate the 60 GHz band waivers that are currently in effect at the conclusion of this transition period. However, we specify that so long as a 60 GHz FDS/radar does not cause harmful interference, it can continue to operate until its natural replacement. Any equipment currently operating pursuant to a waiver that is subsequently modified, however, must be brought into compliance with the new rules.

IV. PROCEDURAL MATTERS

66. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[176] 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."[177] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes and/or policy contained in this Report and Order on small entities. The FRFA is set forth in Appendix C.

67. *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 & Order, etc. to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

68. *Paperwork Reduction Act Analysis*. This *Report and Order* does not contain new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSES

69. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 302, 303(b), (c), (e), (f), (r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302a, 303(b), (c), (e), (f), (r), 307, this *Report and Order* IS HEREBY ADOPTED.

70. IT IS FURTHER ORDERED that Part 15 of the Commission's rules IS AMENDED as specified in Appendix B, and such rule amendments WILL BECOME EFFECTIVE 30 days after the date of publication in the *Federal Register*.

71. IT IS FURTHER ORDERED that the 60 GHz waivers currently in effect, as granted in DA 18-1308, DA 20-795, DA 21-407, DA 21-811, DA 21-812, DA 21-813, DA 21-814, DA 21-815, and DA 21-816 are TERMINATED effective six months after the effective date of the rule amendments adopted herein unless expressly extended by the Chief, Office of Engineering and Technology. However, a device that was certified to be marketed and to operate under waiver on or before six months after the effective date of the rule amendments adopted herein MAY CONTINUE TO BE MARKETED AND OPERATE in accordance with the terms of its certification so long as the device does not cause harmful interference.

72. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental

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[175] All 60 GHz devices are approved by TCBs rather than the Commission. When a TCB approves a device, the Commission is notified only after the approval rather than when the applicant files an application for certification. Accordingly, we are specifying transition dates based on when a TCB approves a device rather than on when a party files an application for certification. During the transition period, TCBs may continue to approve devices that comply with the terms of the existing waivers even if they do not meet the terms of the new rules.

[176] 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[177] 5 U.S.C. § 605(b).

Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Report and Order*, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

73. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List Of Commenters

Comments

Acconeer AB
ADC Automotive Distance Control Systems GMBH
Advocates for Highway and Auto Safety
Alliance for Automotive Innovation
Alps Alpine Co., Ltd.
Amazon.com, Inc.
Automotive Safety Council (ASC)
Axis Communications
Blu Wireless, Inc.
BrainLit AB
Facebook, Intel, and Qualcomm Incorporated
Google LLC
Husqvarna AB
IEE Sensing Inc.
Infineon Technologies Americas Corp.
Inxpect SPA
Intelligent Traffic Equipment Marketing Ltd. (ITEM Ltd.)
Motor and Equipment Manufacturers Association (MEMA)
National Academy of Sciences' Committee On Radio Frequencies (CORF)
National Telecommunications and Information Administration (NTIA)
Nexty Electronics Corporation (Nexty)
Rivieh, Inc.
RelyQ LLC
Restar Electronics Americas Inc.
Robert Bosch LLC
Texas Instruments Incorporated
TrickleStar, Inc.
Väderstad AB
Valeo North America, Inc.
Vayyar Imaging Ltd.
WI-FI Alliance

Reply Comments

Acconeer AB
ADC Automotive Distance Control Systems GMBH
Alliance for Automotive Innovation (Auto Innovators)
Alps Alpine Co., Ltd.
Apple Inc.
Axis Communications AB
Banner Engineering Corporation
CODICO
Consumer Technology Association (CTA)

Digi-Key
Eleven-x Inc.
Facebook Inc., Intel Corporation, and Qualcomm Incorporated
Force Five Inc.
Frequency Allocation in Remote Sensing (FARS) Technical Committee
Google LLC
Groove X, Inc.
Hosiden Corporation
IEE Sensing Inc.
IEEE 802 LAN/MAN Standards Committee (LMSC)
Imagimob AB
Indesmatech ApS
Infineon Technologies Americas Corp. (Infineon)
JulyMonster Inc.
MicroSummit K.K.
Motor and Equipment Manufacturers Association (MEMA)
OSM Group
Packwise GmbH
PERASO
Robert Bosch LLC
Sleepiz AG
Spop Tech, Inc.
TecAHEAD Incorporated
Tekelek Ltd
Texas Instruments Incorporated
Vayyar Imaging Ltd.
Vtech Telecommunications Ltd.
Wireless Internet Service Providers Association
Zektur AB

Ex parte Comments

Acconeer AB
ACT | The App Association
Advocates for Highway and Auto Safety
The Alliance for Automotive Innovation
Amazon.com Services LLC
Apple Inc.
Blumio, Inc.
Consumer Technology Association (CTIA)/ Information Technology Industry Council (ITI)/
Continental Corporation
Garmin International, Inc.
General Aviation Manufacturing Association
Global Sunrise Marketing LLC (dba Greenworks)
Google LLC Infineon Technologies Americas Corp.
Inxpect SPA
Joint Acconeer AB, Amazon.com Services LLC, Google LLC, Infineon Technologies Americas Corp., and Texas Instruments Incorporated
Joint Acconeer AB, Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated

Joint Amazon.com, Inc., Apple Inc., Continental Corporation, Google LLC, Infineon Technologies Americas Corp. and Texas Instruments Incorporated
Joint Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Intel Corporation, Meta Platforms Inc., Qualcomm Incorporated, Texas Instruments Incorporated, and Vayyar Imaging Ltd.
Joint Amazon.com Services LLC, Continental Corporation, Google LLC, IEE Sensing, Inc., Infineon Technologies Americas Corp. and Texas Instruments Incorporated
Joint Amazon.com Services LLC, Google LLC, IEE Sensing, Inc., Infineon Technologies Americas Corp., Texas Instruments Incorporated and Vayyar Imaging Ltd.
Joint Association for Uncrewed Vehicle Systems International (AUVSI), Commercial Drone Alliance (CDA) and Small UAV Coalition
Joint Information Technology and Innovation Foundation /Open Technology Institute at New America/ R Street Institute/ Public Knowledge/ American Action Forum
Joint Intel Corporation, Meta Platforms Inc. and Qualcomm Incorporated
Joint NetChoice/ TechNet/ U.S. Chamber of Commerce
Lenovo (United States) Inc.
Magic Leap Inc.
New America's Open Technology Institute
Robert Bosch LLC
Sunrise Global Marketing, LLC dba Greenworks Tools
Tellus You Care, Inc.
Texas Instruments Incorporated
Wingtra AG

APPENDIX B

Final Rules

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15 – RADIO FREQUENCY DEVICES

The authority citation for part 15 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

1. Section 15.3(l) is revised to read as follows:

§ 15.3 Definitions.

* * * * *

(l) ***Field disturbance sensor.*** A device that establishes a radio frequency field in its vicinity and detects changes in that field resulting from the movement of persons or objects within its range. A radar operating pursuant to the definition for radiodetermination station in § 2.1 of this chapter is an example of a field disturbance sensor.

* * * * *

2. Section 15.31 is amended by revising paragraph (c) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(c) Except as otherwise indicated in §§ 15.255 and 15.256, for swept frequency equipment, measurements shall be made with the frequency sweep stopped at those frequencies chosen for the measurements to be reported.

* * * * *

3. Section 15.35 is amended by revising paragraph (c) to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

* * * * *

(c) Unless otherwise specified, e.g., §§ 15.255 and 15.256(l)(5), when the radiated emission limits are expressed in terms of the average value of the emission, and pulsed operation is employed, the measurement field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative (provided the transmitter operates for longer than 0.1 seconds) or in cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the average absolute voltage during a 0.1 second interval during which the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for certification or shall be retained in the measurement data file for equipment subject to Supplier's Declaration of Conformity.

* * * * *

4. Section 15.37 is amended by adding a new paragraph (r) to read as follows:

§ 15.37 Transition provisions for compliance with this part.

* * * * *

(r) Field disturbance sensor/radar devices being marketed or operating in the frequency band 57-64 GHz approved by Telecommunication Certification Bodies as being in compliance with previously adopted rules or waivers thereof on or before **[six months after the effective date of the rules]** may continue to be marketed and operate in accordance with their certifications. All other field disturbance sensor/radar devices shall comply with the requirements in § 15.255.

* * * * *

5. Section 15.255 is amended by adding headings to paragraphs (b), (g), and (h), revising paragraph (a) and removing paragraphs (a)(1) and (a)(2); amending paragraph (b) by revising paragraph (b)(2)(ii), adding paragraphs (b)(2)(iii) and (b)(3); amending paragraph (c) by revising the introductory sentence, and revising paragraphs (c)(1) through (4); turning the introductory text to paragraph (d) into an italicized heading, amending paragraph (e) by revising the introductory paragraph, adding paragraphs (e)(1) and (2), and removing paragraph (e)(3); and revising paragraph (i), and adding paragraphs (i)(1) and (2) to read as follows:

§ 15.255 Operation within the band 57-71 GHz.

(a) *General.* Operation under the provisions of this section is not permitted for equipment used on satellites.

(b) *Operation on aircraft.* * * *

(1) * * *

(2) * * *

(i) * * *

(ii) Except as permitted in paragraph (b)(3) of this section, equipment shall not be used on aircraft where there is little attenuation of RF signals by the body/fuselage of the aircraft.

(iii) Field disturbance sensor/radar devices may only operate in the frequency band 59.3-71.0 GHz while installed in passengers' personal portable electronic equipment (e.g., smartphones, tablets) and shall comply with paragraph (b)(2)(i) of this section, and relevant requirements of paragraphs (c)(2) through (4) of this section.

(3) Field disturbance sensors/radar devices deployed on unmanned aircraft may operate within the frequency band 60-64 GHz, provided that the transmitter not exceed 20 dBm peak EIRP. The sum of continuous transmitter off-times of at least two milliseconds shall equal at least 16.5 milliseconds within any contiguous interval of 33 milliseconds. Operation shall be limited to a maximum of 121.92 meters (400 feet) above ground level.

(c) *Radiated power limits*. Within the 57-71 GHz band, emission levels shall not exceed the following equivalent isotropically radiated power (EIRP):

(1) Devices other than field disturbance sensors shall comply with one of the following power limits, as measured during the transmit interval:

(i) * * *

(ii) * * *

(2) Field disturbance sensors/radars shall not exceed –10 dBm peak conducted output power and 10 dBm peak EIRP except that field disturbance sensors/radars that limit their operation to all or part of the specified frequency band may operate without being subject to a transmitter conducted output power limit if they operate in compliance with paragraph (b)(3) of this section or with one or more of the provisions below:

(i) 57.0-59.4 GHz: the peak EIRP level shall not exceed 20 dBm for indoor operation or 30 dBm for outdoor operation;

(ii) 57.0-61.56 GHz: the peak EIRP shall not exceed 3 dBm except that the peak EIRP shall not exceed 20 dBm if the sum of continuous transmitter off-times of at least two milliseconds equals at least 16.5 milliseconds within any contiguous interval of 33 milliseconds;

(iii) 57.0-64.0 GHz:

(A) The peak EIRP shall not exceed 14 dBm, and the sum of continuous transmitter off-times of at least two milliseconds shall equal at least 25.5 milliseconds within any contiguous interval of 33 milliseconds, except as specific in paragraph (c)(2)(iii)(B) of this section;
(B) The peak EIRP shall not exceed 20 dBm, and the sum of continuous transmitter off-times of at least two milliseconds shall equal at least 16.5 milliseconds within any contiguous interval of 33 milliseconds when operated outdoors:
(1) As part of a temporary or permanently fixed application; or
(2) When being used in vehicular applications to perform specific tasks of moving something or someone, except for in-cabin applications;

(iv) A field disturbance sensor may operate in any of the modes in the above sub-sections so long as the device operates in only one mode at any time and does so for at least 33 milliseconds before switching to another mode.

(v) 61.0-61.5 GHz: For field disturbance sensors/radars that occupy 500 MHz bandwidth or less that are contained wholly within the frequency band 61.0-61.5 GHz, the average power of any emission, measured during the transmit interval, shall not exceed 40 dBm, and the peak power of any emission shall not exceed 43 dBm. In addition, the average power of any emission outside of the 61.0-61.5 GHz band, measured during the transmit interval, but still within the 57-71 GHz band, shall not exceed 10 dBm, and the peak power of any emission shall not exceed 13 dBm.

(3) For pulsed field disturbance sensors/radars operating in the 57-64 GHz band that have a maximum pulse duration of 6 ns, the average EIRP shall not exceed 13 dBm and the transmit duty cycle shall not exceed 10% during any 0.3 μs time window. In addition, the average integrated EIRP within the frequency band 61.5-64.0 GHz shall not exceed 5 dBm in any 0.3 μs time window. Peak emissions shall not exceed 20 dB above the maximum permitted average emission limit applicable to the equipment under test. The radar bandwidth is the frequency band bounded by the points that are 10 dB below the highest radiated emission, as based on the complete transmission system including the antenna.

(4) The provisions in § 15.35(b) and (c) that require emissions to be averaged over a 100 millisecond period and that limits the peak power to 20 dB above the average limit do not apply to devices operating under paragraphs (c)(2) and (3) of this section.

(d) *Limits on spurious emissions.*

* * *

(e) *Limits on transmitter conducted output power.*

(1) Except as specified in paragraph (e)(2) of this section, the peak transmitter conducted output power of devices other than field disturbance sensors/radars shall not exceed 500 mW. Depending on the gain of the antenna, it may be necessary to operate the intentional radiator using a lower peak transmitter output power in order to comply with the EIRP limits specified in paragraph (c) of this section.

(2) Devices other than field disturbance sensors/radars with an emission bandwidth of less than 100 megahertz must limit their peak transmitter conducted output power to the product of 500 mW times their emission bandwidth divided by 100 megahertz. For the purposes of this paragraph, emission bandwidth is defined as the instantaneous frequency range occupied by a steady state radiated signal with modulation, outside which the radiated power spectral density never exceeds 6 dB below the maximum radiated power spectral density in the band, as measured with a 100 kilohertz resolution bandwidth spectrum analyzer. The center frequency must be stationary during the measurement interval, even if not stationary during normal operation (e.g., for frequency hopping devices).

* * *

(g) *Radio frequency radiation exposure*. * * *

(h) *Group installation*. * * *

(i) *Compliance measurement.* Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance.

(1) For purposes of demonstrating compliance with this section, corrections to the transmitter conducted output power may be made due to the antenna and circuit loss.

(2) Compliance measurements of frequency-agile field disturbance sensors/radars shall be performed with any related frequency sweep, step, or hop function activated.

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) released in July 2021 in this proceeding.[2] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the *Report and Order*

2. This *Report and Order* revises section 15.255 of the Commission's rules to provide new opportunities for unlicensed field disturbance sensor (FDS) devices (e.g., radars) to operate in the 57-71 GHz band (60 GHz band) while still ensuring coexistence with other unlicensed technologies in the band and with passive sensors in the 57.0-59.3 GHz Earth Exploration Satellite Service (EESS) band. The final rules set forth distinct technical and operational provisions for different segments of the band. They will permit new fixed and mobile FDS devices to implement pulse or frequency-modulated continuous-wave (FMCW) techniques to facilitate new use cases including installation on low-flying unmanned aircraft. Importantly, novel use cases that support safety, such as vehicle occupant detection, chest movement detection to determine breathing patterns, and eye lid movement detection to determine driver alertness are also expected to see widespread deployment.

3. Specifically, the Report and Order: 1) clarifies the relationship between radars and FDS applications and modifies the rules to expand mobile FDS operations within the 60 GHz band, including within the 61.0-61.5 GHz sub band, where higher powered operations are currently permitted but only for fixed use; 2) permits various EIRP levels along with specific duty cycle restrictions related to specific segmentations of the band for FDS devices that limit their operating frequencies to the 57-64 GHz portion of the 57-71 GHz band. The Report and Order found that these distinctions offer the best opportunity for new and existing unlicensed devices to successfully co-exist in the 60 GHz band;3) permits FDS operation on-board unmanned aircraft (UA) flying at altitudes less than 121.92 meters (400 feet) above ground level, limited to the 60-64 GHz band, at up to 20 dBm peak EIRP subject to a 50% duty cycle; and discusses how our new rules for FDS devices relate to existing provisions for limited in-cabin aeronautical use; and 4) addresses matters related to compliance testing and use of equipment that currently operates under waivers of the existing rules.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[4]

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[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] *Amendment of Section 15.255 of the Commission's Rules*, ET Docket Nos. 21-264, Notice of Proposed Rulemaking, 36 FCC Rcd 11901 (July 14, 2021) (*NPRM*).

[3] *See* 5 U.S.C. § 604.

[4] *Id.* § 604(a)(3).

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

8. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[9] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[10] The SBA small business size standard for this industry classifies firms having 1,250 employees or less as small.[11] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[12] Of this number, 624 had fewer than 250 employees.[13] Based on this data, we conclude that a majority of manufacturers in this industry are small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

9. As there is insufficient data on the record, the Commission cannot, at present, definitively quantify the cost of recordkeeping, reporting or other forms of compliance and cannot determine whether small entities will have to hire attorneys, engineers, consultants or other professionals to comply with the rules adopted in the *Report and Order*; however, we sought comment on any steps that could be taken to

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[5] *Id.* § 604(a)(4).

[6] *Id.* § 601(6).

[7] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[8] 15 U.S.C. § 632.

[9] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[10] *Id.*

[11] *See* 13 CFR § 121.201, NAICS Code 334220.

[12] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[13] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

minimize any significant economic impact on small businesses. No comments were received on this issue.

10. Radars operating in the 60 GHz band are required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation, and the rules adopted in the *Report and Order* have no impact on that requirement. We believe that this rulemaking, by expanding the flexibility of unlicensed FDS devices in the 60 GHz band, will provide an advantage to small entities, as these entities will benefit from being able to access this spectrum without the complication or cost of needing to obtain a license by operating FDS devices in other frequency bands. On balance, we believe this will constitute a significant benefit for small businesses.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities…including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[14]

12. The rule changes in the *Report and Order* for higher power to field disturbance sensors and radars will provide greater flexibility to 60 GHz device operations by expanding the permissible uses for short-range radars in the 57 to 64 GHz band while promoting coexistence with other unlicensed users, and not interfering with licensed and authorized users in the band. As these rule changes provide greater flexibility, they may benefit small entities in multiple ways. For example, since the operation of 60 GHz devices do not require a license, small entities are able to operate 60 GHz devices without the cost or inconvenience of obtaining a license. Moreover, with the rule changes, small entities will be able to operate new types of equipment, FDS/radars, at higher power, thus enabling additional applications, bringing multiple consumer benefits.

13. Throughout the comment cycle, the Commission was asked to consider numerous views from small and other entities on matters reflecting longstanding disagreements amongst various industry segments regarding equitable spectrum access. For example, disagreements emerged between radar proponents and communication proponents, with parties from each group opposing different aspects of the proposals concerning power levels and duty cycles/radar transmission off-times based on different segmentations of the 57-64 GHz band. We considered all proposals raised by the various commentors as potential alternatives to the proposed rule. However, given the wide ranging differences in opinion amongst the various commenters, the Commission sought to minimize the significant economic impact on small entities by seeking common ground and compromise amongst the disparate parties. We feel this has been largely achieved in the *Report and Order* through the Industry Consensus Agreement submitted on February 27, 2023 that addresses the interests of both FMCW radars and communications devices,[15] and via a separate Pulse Radar Joint Agreement submitted on November 10, 2022 that describes technical parameters suitable for pulse radar operations.[16]

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[14] 5 U.S.C. § 604(a)(6).

[15] Joint *ex parte* from radar proponents (represented by Amazon.com Services LLC, Continental Corporation, Garmin International, Inc., Google LLC, IEE Sensing Inc., Infineon Technologies Americas Corp., Texas Instruments Incorporated, and Vayyar Imaging Ltd.) and communications proponents (represented by Intel Corporation, Meta Platforms Inc., and Qualcomm Incorporated) (filed Feb. 27, 2023) (Industry Consensus Agreement).

[16] Joint *ex parte* from Acconeer, Intel, Meta Platforms, and Qualcomm (filed Nov. 10, 2022) (Pulse Radar Joint Agreement).

14. While any rule changes come with some potential burden, we believe that the rule changes that we are implementing in the *Report and Order* are necessary in order to ensure that the public receives the benefits of innovative products and technologies in a prompt and efficient manner.

G. 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.[17] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[18]

[17] 5 U.S.C. § 801(a)(1)(A).

[18] *See* 5 U.S.C. § 604(b).

APPENDIX D

Tables Of Technical Parameters

Table 1 – Industry Consensus Agreement

Mode	Frequency Range	Use Cases	Power Limit (Peak EIRP)	Off Time Requirement: off times (>= 2 ms) must sum to at least X ms per 33 ms interval
Field disturbance sensors excluding outdoor drones /UA (*i.e.*, unmanned aircraft – see below)	57.0 - 59.4 GHz	All	20 dBm for indoor 30 for outdoor, including all vehicular, applications	None
	57.0 - 61.56 GHz	All	3 dBm	None
	57.0 - 61.56 GHz	All	20 dBm	16.5 ms off time per 33 ms
	57.0-64.0 GHz	All	14 dBm	25.5 ms off time per 33 ms
	57.0-64.0 GHz	Fixed outdoor or vehicular uses (except in-cabin)[4]	20 dBm	16.5 ms off time per 33 ms
Outdoor drones/UA	60-64 GHz	Drones/UA	20 dBm	16.5 ms off time per 33 ms

NOTES:

- Switching between requirements in frequency ranges is allowed in successive 33 ms frames (for example, operation in the 57-61.56 GHz band under applicable parameters in the first 33 ms frame followed by operation in the 57-64 GHz band under applicable parameters in the second 33 ms frame, *etc*.).
- No separate duty cycle requirements are imposed on active 60 GHz transmitters beyond what is stated in the right-most column.
- Fixed operation includes temporarily or permanently fixed operations. Vehicular uses include operations where the device is installed within or on the exterior of a vehicle intended for outdoor use (such that any indoor use is incidental – for example, an automobile in a parking garage) but excludes all in-cabin applications or operations.

Table 2 – Pulse Radar Joint Agreement

Technical Parameter[5]	Permissible Pulse Radar Operations
Operating frequency high	64 GHz
Operating frequency low	57 GHz
Duty cycle	10%, evaluated in any 0.3 μs time window
Average EIRP	13 dBm, evaluated in any 0.3 μs time window, and the average integrated EIRP within 61.5 to 64.0 GHz shall not exceed 5 dBm in any 0.3 μs time window
Pulse duration	< 6 ns
Peak EIRP	Peak RF emissions must not exceed 20 dB greater than the maximum permitted average emission limit applicable to the equipment under test

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Allowing Expanded Flexibility and Opportunities for Radar Operation in the 57-64 GHz band*, ET Docket No. 21-264, Report and Order

Welcome to the radar revolution. It is no longer just for tracking planes and measuring weather patterns. That's because we are on the cusp of deploying radar technology for a much wider range of uses. So get ready. Because what comes next is exciting. The odds are good we will see this technology used for real-time traffic management that can reduce congestion and increase safety for the vehicles, cyclists, and pedestrians who share our roads. We also may see this technology used to make our devices more accessible through gesture controls, which could be a gamechanger for those with limited mobility. Thanks to early waivers from this agency, it has already been used to monitor for children left in hot cars, triggering alerts that can save their lives. And we are seeing the development of radar-based breathing systems that help keep a safe watch over premature infants in neonatal intensive care units.

All of this is possible—and our work here today is a big reason why. In this decision, we are updating our approach to the 60 GHz band. We are modernizing it so that it can be used to its full potential. That means expanding mobile operations for radar technology, increasing where and how it can be used. So get ready to see new augmented reality and virtual reality applications and a whole lot of other high-speed, data-intensive innovative activities in this band.

You don't get this far this fast in a revolution without a dynamic squad. This effort to update the 60 GHz band benefited immeasurably from a broad group of stakeholders, including unlicensed actors, drone operators, robotics interests, and automotive companies who worked together to find a path forward. I want to thank them for their collaboration.

I also want to thank the team at the agency who helped make this creative approach to the band a reality: Damian Ariza, Bahman Badipour, David Duarte, Michael Ha, Kevin Holmes, Steve Jones, Ira Keltz, Nicholas Oros, Siobahn Philemon, Jamison Prime, Ronald Repasi, Thomas Struble, Hugh VanTuyl, and Anh Wride from the Office of Engineering and Technology; Kari Hicks, Ethan Jeans, John Lockwood, and Joel Taubenblatt from the Wireless Telecommunications Bureau; Patrick Brogan, Giulia McHenry, Michelle Schaefer, Donald Stockdale, Patrick Sun, Emily Talaga, and Aleks Yankelevich from the Office of Economics and Analytics; Deborah Broderson, David Horowitz, Bill Richardson, and Chin Yoo from the Office of General Counsel; Michael Gussow and Joy Ragsdale from the Office of Communications Business Opportunities; Jeremy Marcus, Ryan McDonald, and Victoria Randazzo from the Enforcement Bureau; and Ethan Lucarelli from the Office of International Affairs.

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

In the Matter of	)	
	)	
Expanding Flexible Use of the 12.2-12.7 GHz Band	)	WT Docket No. 20-443
	)	
Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use	)	GN Docket No. 22-352
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING AND NOTICE OF PROPOSED RULEMAKING AND ORDER

Adopted: May 18, 2023 **Released: May 19, 2023**

Comment Date: 30 days after date of publication in the Federal Register
Reply Comment Date: 60 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Simington issuing separate statements.

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I. INTRODUCTION

1. Today's actions put us on the path towards expanding the beneficial use of up to 1,050 megahertz of mid-band spectrum by a diverse set of terrestrial (licensed and possibly unlicensed) and satellite communications systems, promoting technological innovation, and bolstering the growth of the nation's economy. In this item, we take steps to ensure current and future satellite services relied upon by millions of people across the country are preserved and protected in the 12.2-12.7 GHz band (12.2 GHz band)[1] while continuing to develop a pipeline of mid-band spectrum for mobile broadband or other expanded uses essential for connecting everyone, everywhere in the 12.7-13.25 GHz band (12.7 GHz band).[2]

2. In the 12.2 GHz band *Report and Order*, we find that authorizing two-way, high-powered terrestrial mobile service in the 12.2 GHz band would impose a significant risk of harmful interference to existing and emergent services in the band, including satellite services. Such interference could undermine investments made by incumbent licensees and jeopardize their potential to provide new services to underserved communities, including rural communities. Although we decline to authorize two-way, high-powered terrestrial mobile use in these frequencies, in the 12.2 GHz band *Further Notice of Proposed Rulemaking* we further investigate the potential to expand terrestrial fixed use or to permit unlicensed use in these 500 megahertz of mid-band spectrum.

[1] In order to distinguish references to the bands in this item, we refer to the 12.2-12.7 GHz band as the 12.2 GHz band throughout. *See Expanding Flexible Use of the 12.2-12.7 GHz Band*, WT Docket Nos. 20-443 et al., Notice of Proposed Rulemaking, 36 FCC Rcd 606 (2021) *(12.2 Notice*).

[2] In order to distinguish references to the bands in this item, we refer to the 12.7-13.25 GHz band as the 12.7 GHz band throughout. *See In the Matter of Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, Notice of Inquiry, FCC 22-80, 2022 WL 16634851 (Oct. 28, 2022) (*12.7 NOI*).

3. To further our efforts to make spectrum available for terrestrial mobile service, in the 12.7 GHz band *Notice of Proposed Rulemaking,* we propose to repurpose some or all of the 550 megahertz of mid-band spectrum for mobile broadband or other expanded use. The record demonstrates substantial support for repurposing these mid-band frequencies for next-generation wireless technologies including 5G, 5G Advanced, and 6G services that will depend on extremely high data rates, and the reliability, low latency, and capacity that the 12.7 GHz band spectrum can provide.[3] Accordingly, in this *Notice of Proposed Rulemaking*, we seek comment on various proposed means for transitioning some or all of the 12.7 GHz band to mobile broadband and other expanded use, as well as on alternative changes to the Commission's rules that could promote use of the band on a shared basis. To improve the data on which to base our decisions regarding the future structure of the 12.7 GHz band, we adopt a 12.7 GHz band *Order* directing fixed and mobile Broadcast Auxiliary Services (BAS) and Cable Television Relay Services (CARS) licensees that use the 12.7 GHz band to certify the accuracy of the information reflected on their licenses.

II. BACKGROUND

A. 12.2 GHz Band—500 megahertz

4. The 12.2 GHz band is allocated on a primary basis for non-Federal use for Broadcasting Satellite Service (BSS) (referred to domestically as Direct Broadcast Satellite (DBS)), Fixed Satellite Service (FSS) (space-to-Earth) limited to non-geostationary orbit systems (NGSO FSS), and Fixed Service.[4] While the three services are co-primary, NGSO FSS and Fixed Service are allocated on a non-harmful interference basis to DBS.[5] Currently there are three services operating in the band: DBS providers operating under the primary BSS allocation, NGSO FSS licensees operating under the co-

[3] *See* Ericsson Comments at 5; Qualcomm Comments at 3, 7. Qualcomm notes that next generation technology advancements such as active Antenna Systems (AAS) and Giga-MIMO will compensate for attenuation in such high frequency bands. Qualcomm Comments at 5; *see also* Nokia Comments at 2-3.

[4] *See* 47 CFR § 2.106, United States Table of Frequency Allocations, non-Federal Table for the band 12.2-12.7 GHz. NGSO FSS (space-to-Earth) operations are authorized pursuant to international footnote 5.487A, which provides additional allocations including in Region 2 as follows:

> [The 12.2-12.7 GHz is] 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 [ITU Radio Regulations] 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 [ITU Radiocommunication] 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 [international footnote] No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the [12 GHz band] shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

47 CFR § 2.106, n.5.487A. When an international footnote is applicable without modification to non-Federal operations, the Commission places the footnote on the non-Federal Table. *See* 47 CFR § 2.105(d)(5).

[5] *See* 47 CFR § 2.106, n.5.490 (International Footnote). In Region 2, in the 12.2-12.7 GHz band, 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. "Harmful Interference" is defined under the Commission's rules as "[i]nterference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with the ITU Radio Regulations." 47 CFR § 2.1(c). *See* also Annex to the Constitution of the ITU, 1003 (defining harmful interference).

primary NGSO FSS allocation, and Multi-Channel Video and Data Distribution Service (MVDDS) licensees operating under the co-primary Fixed Service allocation.[6]

5. While DBS service began in 1994, and NGSO FSS systems were authorized in the early 2000s, the Commission permitted MVDDS to operate in the 12.2 GHz band starting in 2004 under technical rules to ensure that MVDDS stations do not cause harmful interference to DBS or earlier-in-time NGSO FSS fixed subscriber receivers.[7] To that end, MVDDS service was limited to a relatively low power, one-way, digital fixed non-broadcast service, including one-way direct-to-home/office wireless service with each proposed transmitter subject to detailed prior coordination requirements.[8] In April 2016, a coalition of MVDDS licensees filed a Petition for Rulemaking requesting reforms to the 12.2 GHz band rules, including permitting MVDDS licensees to use the band for two-way mobile broadband services.[9]

6. Later in 2016, the International Bureau opened a processing round to accept NGSO FSS applications and petitions for market access in several frequency bands[10] and the Commission reformed its NGSO FSS rules.[11] In 2017, the Commission granted the first of the new generation NGSO FSS requests—a petition for market access by WorldVu Satellites Limited (OneWeb) for a planned Low Earth Orbit (LEO) NGSO FSS satellite system of 720 satellites authorized by the United Kingdom in the 10.7-12.7 GHz Band (in addition to several other bands).[12] The Commission concluded that "the pendency of the MVDDS 5G Coalition's Petition for Rulemaking was not a sufficient reason to delay or deny these requests to use the band under the existing NGSO FSS allocation and service rules."[13] In granting this request, however, the Commission conditioned access to the 12 GHz band on the outcome of the

[6] 47 CFR § 101.147(a) n.31.

[7] *See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, *Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band*, ET Docket No. 98-206, First Report and Order and Further Notice of Proposed Rule Making, 16 FCC Rcd 4096, 4177, para. 213 (2000) (*First Report and Order and FNPRM).*

[8] *See* 47 CFR § 101.1407 (two-way services can be provided using spectrum in other bands for the return link). *See also Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614 (2002) (*MVDDS Second Report and Order*) (*aff'd Northpoint Technology, LTD et al. v. FCC*, 414 F.3d 61 (D.C. Cir. 2005)).

[9] Petition of MVDDS 5G Coalition Petition for Rulemaking, RM-11768 (filed Apr. 26, 2016), https://www.fcc.gov/ecfs/document/60001658886/1 (MVDDS 5G Coalition Petition). *See also Petition for Rulemakings Filed*, Public Notice, Report No. 3042 (May 9, 2016) (Petition Public Notice).

[10] *See Satellite Policy Branch Information; OneWeb Petition Accepted for Filing (IBFS File No. SAT-LOI-20160428-00041), Cut-Off Established for Additional NGSO-Like Satellite Applications or Petitions for Operations in the 10.7-12.7 GHz, 14.0-14.5 GHz, 17.8-18.6 GHz, 18.8-19.3 GHz, 27.5-28.35 GHz, 28.35-29.1 GHz, and 29.5-30.0 GHz Bands*, Public Notice, 31 FCC Rcd 7666 (IB July 15, 2016).

[11] In September 2017, the Commission adopted the *NGSO FSS Report and Order*, updating several rules and policies governing NGSO FSS systems. *See Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809 (2017) (*NGSO FSS Report and Order*).

[12] *See WorldVu Satellites Limited, Petition for Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System*, Order and Declaratory Ruling, 32 FCC Rcd 5366 (2017) (*OneWeb Order*).

[13] *Id.* at 5369, para. 6.

MVDDS 5G Coalition's Petition and any other rulemaking initiated on the Commission's own motion.[14] The Commission also agreed with comments of the MVDDS 5G Coalition that MVDDS should not have to protect any NGSO FSS earth stations in motion operations in the band, if authorized in the future, because such operations had not been contemplated under the longstanding first-in-time MVDDS/NGSO FSS sharing approach.[15] The NGSO FSS Report and Order adopted, among other things, spectrum sharing rules and a more flexible milestone schedule for NGSO FSS systems.[16] The Commission subsequently granted five additional NGSO FSS requests to use bands that include the 12.2 GHz band (among others).[17]

7. NGSO FSS systems have continued to deploy. In particular, SpaceX received modified authority for its first generation (Gen 1) system to decrease the altitude from the 1,100-1,300 km to the 540-570 km range for 2,814 satellites as well as approval of its updated orbital debris mitigation plan.[18] To date, SpaceX has deployed approximately 4,000 satellites.[19] We also recently issued a partial grant to SpaceX to begin deploying its second generation (Gen 2) system, with a grant approving up to 7,500 satellites to operate in the Ka- and Ku-frequency bands.[20] OneWeb also recently received modified authority for its constellation[21] and, to date, it has deployed over 580 satellites.[22] On June 30, 2022, the

[14] *Id.* at 5378, para. 26 ("This grant of U.S. market access and any earth station licenses granted in the future are subject to modification to bring them into conformance with any rules or policies adopted by the Commission in the future."). *See also id*. at 5369, para. 6 ("Accordingly, any investment made toward operations in this band by OneWeb in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of such Commission actions.").

[15] *Id.* at 5370, para. 8.

[16] *See NGSO FSS Report and Order*, 32 FCC Rcd at 7821-31, paras. 37-68.

[17] *Space Norway AS, Petition for a Declaratory Ruling Granting Access to the U.S. Market for the Arctic Satellite Broadband Mission*, Order and Declaratory Ruling, 32 FCC Rcd 9649 (2018) (*Space Norway Order*); *Karousel Satellite LLC, Application for Authority to Launch and Operate a Non-Geostationary Earth Orbit Satellite System in the Fixed Satellite Service*, Memorandum Opinion, Order and Authorization, 33 FCC Rcd 8485 (2018) (*Karousel Order*), *Space Exploration Holdings, LLC Application For Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System*, Memorandum Opinion Order and Authorization, 33 FCC Rcd 3391 (2018) (*SpaceX Order*), *Kepler Communications Inc. Petition for Declaratory Ruling to Grant Access to the U.S. Market for Kepler's NGSO FSS System*, Order, 33 FCC Rcd 11453, (2018) (*Kepler Order*), *Theia Holdings A, Inc. Request for Authority to Launch and Operate a Non-Geostationary Satellite Orbit System in the Fixed-Satellite Service, Mobile-Satellite Service, and Earth-Exploration Satellite Service*, Memorandum, Opinion and Authorization, 34 FCC Rcd 3526 (2019) (*Theia Order*).

[18] *Space Exploration Holdings, LLC, Request for Modification of the Authorization for the SpaceX NGSO Satellite System*, Order and Authorization, 36 FCC Rcd 7995 (2021).

[19] *See, e.g.*, Mike Wall, SpaceX launches 56 Starlink satellites, lands rocket at sea, space.com ("SpaceX has now lofted more than 4,200 Starlink satellites overall, according to astrophysicist and satellite tracker Jonathan McDowell.") (Mar. 29, 2023), https://www.space.com/spacex-starlink-group-5-10-launch#:~:text=SpaceX%20launched%20another%20big%20batch,p.m.%20EDT%20(2001%20GMT).

[20] *Space Exploration Holdings, LLC*, *Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, IBFS File No. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105, Order and Authorization, FCC 22-91, 2022 WL 17413767, at *54, para. 135(ii) (Dec. 1, 2022) (*SpaceX Gen2 Order*) (stating that the "authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. [And, that]…any investments made toward operations in the bands authorized [by the] Order by SpaceX in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of any future Commission actions…[including, but not limited to]…any conditions or requirements resulting from any action in the proceedings associated with…WTB Docket 20-443…").

[21] *WorldVu Satellites Limited, Petition for Declaratory Ruling to Modify the U.S. Market Access Grant for the OneWeb Ku-band and Ka-Band NGSO FSS System*, Order and Declaratory Ruling, DA 22-970 (IB, rel. Sept. 16,

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International Bureau authorized SpaceX and Kepler to serve earth stations in motion (ESIMs) in the 12.2 GHz band on an unprotected, non-harmful interference basis.[23]

8. On January 15, 2021, the Commission released a Notice of Proposed Rulemaking (*12.2 Notice*) to allow interested parties to address whether it could add a mobile allocation and make other changes to expand terrestrial use of the 12.2 GHz band without causing harmful interference to incumbent licensees and, if so, whether such action would promote or hinder the delivery of next-generation services in the 12.2 GHz band given the existing and emergent services offered by incumbent licensees.[24]

B. 12.7 GHz Band—550 megahertz

9. In the United States, the 12.7 GHz band is allocated on a primary basis for non-Federal use to Fixed Service (FS), FSS (Earth-to-space), and the Mobile Service (MS).[25] The band is shared among Fixed Microwave Services (FS—part 101), fixed and mobile BAS (part 74), fixed and mobile CARS(part 78), and Fixed Satellite Services (FSS—part 25).[26] The 12.75-13.25 GHz band has only limited Federal use. Specifically, the National Aeronautics and Space Administration (NASA) operates a

(Continued from previous page)
2022) (petition to modify grant of U.S. market access granted in part and deferred in part to approve minor adjustments to number of satellites per plane without exceeding previously-approved total of 720 satellites).

[22] *See, e.g.*, Letter from Kimberly M. Baum, Vice President, Spectrum Engineering & Strategy, WorldVu Satellites Limited, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 20-443 *et al*. at 1 (filed Mar. 20, 2023); https://oneweb.net/resources/oneweb-confirms-successful-deployment-40-satellites-launched-spacex-1 ("OneWeb confirms successful deployment of 40 satellites launched with SpaceX. Launch 17 brings the total OneWeb constellation to 582 satellites. Third launch with SpaceX makes penultimate mission to achieving global coverage.").

[23] *SpaceX Services, Inc. Application for Blanket Authorization of Next- Generation Ku-Band Earth Stations in Motion et al.; Kepler Communications Inc. Application for Blanket Authorization of Ku-Band Earth Stations on Vessels*, Order and Authorization, DA 22-695 (IB June 30, 2022) (*ESIMs Authorizations*). DISH and RS Access had argued that granting these applications would constrain the Commission's decision-making in the instant 12.2 GHz band rulemaking proceeding by injecting new ESIM encumbrances into the 12.2 GHz band. *ESIMs Authorizations* at 11-12, para. 22. DISH and RS Access also argued that authorizing ESIMs in the band on an unprotected basis would likely result in primary users in the band being required to assume the costs to prevent service interruptions to SpaceX customers. *Id*. at 11, para. 18. The International Bureau found that granting the applications served the public interest but also recognized that the introduction of a potentially significant number of additional end users in motion could affect the 12 GHz spectrum environment. Therefore the Bureau imposed conditions to ensure grant of those applications would not materially impact the outcome of the 12 GHz rulemaking proceeding. *ESIMs Authorizations* at 12-13, paras. 23-27. The Bureau imposed conditions on the grants related to the 12.2 GHz band including: (1) requiring operations to be on a non-interference basis; (2) subjecting the operations to the outcome of any future rulemaking including the instant 12.2 GHz band GHz proceeding, with the understanding that the presence of ESIMs is not anticipated to materially affect the analysis therein, and subject to modification to conform to any rules or policies adopted, including in the instant 12.2 GHz band proceeding, and assumption of this risk; (3) subjecting the grant to the applicants' representations, including that their NGSO systems have been engineered to achieve a high degree of flexibility to facilitate spectrum sharing with other authorized satellite and terrestrial systems. *Id*. In addition, the Bureau explained that its case-by-case analysis was limited to the applications before it and have no broader applicability. *See id*.

[24] *12.2 Notice,* 36 FCC Rcd at 614, para. 2.

[25] 47 CFR § 2.106. The international and domestic allocations are similar for the 12.75-13.25 GHz band in most respects. However, space-to-Earth transmissions are permitted at 12.7-12.75 GHz in ITU Regions 1 and 3 but not in Region 2. 47 CFR § 2.106, International Table. Domestically, Footnote NG52 of the U.S. Table precludes most GSO FSS systems from using the band for domestic services and limits the deployment of FSS earth stations in the band. *Id.* at n.NG52.

[26] *See* 47 CFR pt. 25 (§§ 25.101-25.702), pt. 74 (§§ 74.600-74.690), pt. 78 (§§ 78.1-78.115), pt. 101 (§§ 101.1-101.1527).

receive-only earth station for its Deep Space Network (DSN) at Goldstone, California, that is authorized to receive transmissions across the entire 12.75-13.25 GHz band.[27]

10. On October 28, 2022, the Commission released its *12.7 GHz Notice of Inquiry* (*12.7 NOI*) to broadly seek information on the current use of the 12.7 GHz band, how the Commission could encourage more efficient and intensive use of the band, and whether the band is suitable for mobile broadband or other expanded use.[28] In response to the 12.7 *NOI*, very few parties have argued that the current balance of incumbents in the 12.7 GHz band should be left unchanged and that the band should remain untouched, and a significant number argue that the band should be used for exclusive, fixed or mobile, flexible high-powered use. Accordingly, in today's *Notice of Proposed Rulemaking*, we seek comment on various proposed means for transitioning some or all of the 12.7 GHz band to mobile broadband and other expanded use. We also seek comment on changes to the Commission's rules that could promote expanded use of the band on a shared basis.

III. REPORT AND ORDER IN WT DOCKET NO. WT 20-443[29]

A. 5G Use of the 12.2-12.7 GHz Band

11. By this Report and Order, we find that it is not in the public interest to add a mobile allocation to permit a two-way terrestrial 5G service in the 12.2 GHz band based on the current record. We find that a new ubiquitous terrestrial 5G service introduced throughout the band would create a significant risk of harmful interference to DBS and NGSO FSS operators. Although we decline to authorize two-way, high-powered terrestrial mobile use we seek further comment in the *Further Notice of Proposed Rulemaking* on how best to maximize use of this 500 megahertz of mid-band spectrum. We take these actions with respect to the 12.2-12.7 GHz band today in conjunction with our related action to issue a *Notice of Proposed Rulemaking* in GN Docket No. 22-352, proposing to expand the use of the 12.7-13.25 GHz band for mobile broadband or other expanded use.[30]

12. In April 2016, the MVDDS 5G Coalition, which included eleven of the twelve MVDDS licensees at that time, filed a Petition for Rulemaking requesting reforms to the 12.2 GHz band rules,[31] including permitting MVDDS licensees to use the band for two-way mobile 5G broadband services.[32] In support of the Petition, the Coalition also provided two Coexistence Studies that it claimed illustrated that a new 5G service could coexist with DBS operators in the band but would be incompatible with NGSO FSS.[33] Subsequently, however, some members of the MVDDS 5G Coalition suggested the possibility of 5G terrestrial use and NGSO FSS sharing in the band.[34]

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[27] *See* 47 CFR § 2.106 & n.US251. *See also infra* note 210.

[28] *See 12.7 NOI.* In the order portion of the *12.7 NOI*, the Commission extended a temporary freeze on 12.7 GHz band applications pending the outcome of GN Docket No. 22-352. *See, e.g., infra* para. 67. When applicable, we refer to the order portion of the *12.7 NOI* as the *12.7 Freeze Extension Order*.

[29] In sections III and IV, record references and citations refer to WT Docket No. 20-443, unless otherwise noted.

[30] *See infra* section V.

[31] *See* MVDDS 5G Coalition Petition. *See also Petition for Rulemakings Filed*, Public Notice, Report No. 3042 (May 9, 2016) (Petition Public Notice).

[32] For brevity and convenience, we refer to terrestrial, 2-way, high-power mobile operations herein as "5G."

[33] MVDDS 5G Coalition Petition Public Notice Comments, Attach. 1, MVDDS 12.2-12.7 GHz Co-Primary Service Coexistence (Coexistence 1) and MVDDS 5G Coalition Petition Public Notice Reply, Appx. A, MVDDS 12.2-12.7 GHZ Co-Primary Service Coexistence II (Coexistence 2) (collectively, Coexistence Studies).

[34] *See e.g.*, Letter from Martha Suarez, President, Dynamic Spectrum Alliance (DSA), to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, at 2 (filed Aug. 21, 2020) (DSA Aug. 21, 2020 *Ex Parte*); Letter from Trey Hanbury, Counsel, RS Access, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, at 2-3 (filed Sept. 21, 2020) (RS Access Sept. 21, 2020 *Ex Parte*); Letter from Jeffrey Blum, Executive Vice President, External and

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13. On January 15, 2021, the Commission released its *12.2 Notice* to allow interested parties to address whether it could add a mobile allocation and make other changes to expand terrestrial use of the 12.2 GHz band without causing harmful interference to incumbent licensees and, if so, whether such action would promote or hinder the delivery of next-generation services in the 12.2 GHz band given the existing and emergent services offered by incumbent licensees.[35] In the *12.2 Notice*, the Commission stated that it would proceed mindful of the significant investments made by incumbents and that it valued the public interest benefits that could flow from investments made to provide satellite broadband services, particularly in rural and other underserved communities that might be more expensive to serve through other technologies. The Commission initiated the instant 12.2 GHz band proceeding to allow interested parties to address whether additional operations can be accommodated in the band while protecting incumbent operations from harmful interference and to provide an opportunity for the Commission to assess the public interest considerations associated with adding a new mobile allocation.[36] In particular, the Commission sought information on the status of technologies that have been developed or are currently in development that would allow for two-way mobile communications in the 12.2 GHz band; whether standards have been set related to such technologies; whether there are any international agreements on a band plan or air interface for the 12.2 GHz band; and the impact (if any) on international rights for U.S.-licensed systems that might be affected as a result of the U.S. providing for expanded shared use of the band.[37] Comments were due May 7, 2021, reply comments were due July 7, 2021, and interested parties have added many *ex parte* filings to the rulemaking dockets since the comment deadlines.[38]

14. In response to the *12.2 Notice*, several of the MVDDS licensees, and one DBS provider that is also a major MVDDS licensee, contend that 5G terrestrial and incumbent services can coexist in the band, the other DBS provider and the NGSO FSS commenters contend that such coexistence is not yet technically feasible. Multiple technical analyses were submitted into the record that purport to model the potential interference between a new 5G mobile terrestrial service and incumbent satellite services in the band.[39] These models rely on various technical assumptions about which the parties greatly disagree.

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Legislative Affairs, DISH, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, at 4 (filed Nov. 12, 2020) (DISH Nov. 12, 2020 *Ex Parte*) (stating that "since the 2016 studies, developments in the satellite industry indicate that NGSO FSS constellations possess geostationary-like functions and properties that could prove more compatible with 5G services in the 12 GHz Band than the last-generation NGSO earth stations.").

[35] *12.2 Notice*, 36 FCC Rcd at 614, para. 2.

[36] *See, e.g.*, *id.* Additionally, the Commission explained that Section 303(y) provides the Commission with authority to provide for flexible use operations only if: "(1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and opportunity for public comment, that (A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users." Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat 251, 268-69 sec. 3005 Flexible Use of Electromagnetic Spectrum (codified at 47 U.S.C. § 303(y)). *See also* 47 CFR §§ 2.106, 27.2, 27.3.

[37] *See 12.2 Notice,* 36 FCC Rcd at 616, para. 21, n.67 (citing Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, Attach. A, Questions Necessary to Balance the 12 GHz NPRM, at 3-4 (filed Jan. 6, 2021) (SpaceX Jan. 6, 2021 *Ex Parte*)).

[38] *See Expanding Flexible Use of the 12.2-12.7 GHz Band, et al.*, WT Docket No. 20-443, et. al, Order, 36 FCC Rcd 6534 (WTB 2021); *Expanding Flexible Use of the 12.2-12.7 GHz Band, et. al.*, WT Docket No. 20-443, et. al., Order, 36 FCC Rcd 9531 (WTB 2021); *see generally* WT Docket No. 20-443 and GN Docket 17-183.

[39] RS Access Comment, Appendix A, Assessment of Feasibility of Coexistence between NGSO FSS Earth Stations and 5G Operations in the 12.2-12.7 GHz Band, at 6 (filed May 7, 2021) (RS Access Comment RKF Study I); Letter from Noah Campbell, CEO, RS Access, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, Attach. A, The Effect of 5G Deployment on NGSO FSS Downlink Operations in the 12.2-12.7 GHz Band (filed May 19, 2022) (RS Access May 19, 2022 RKF Study II); Letter from David Goldman, Senior Director, Satellite Policy, Space
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15. Based on the record in this proceeding, we find that a new ubiquitous 5G terrestrial mobile service cannot coexist with DBS operations in the band without a significant increase in the risk of harmful interference. We are not persuaded by the assurances of one of the two nationwide DBS providers that DBS will be protected,[40] particularly given that the other nationwide DBS provider raises significant concerns.[41] We find that the study submitted by the 5G advocates is based on unsupported assumptions that undermine its reliability. As explained below, the 5G proponents have not demonstrated that a new 5G service will be able to meet the Equivalent Power Flux Density (EPFD) limits required to protect DBS receivers in the 12.2 GHz band. Also, we find that the 5G proponents have not adequately addressed the issues raised both in the *12.2 Notice* and by commenters regarding the applicability of burden-shifting protection obligations, lower earth-station elevation angles, power limits, EPFD limits and receiver location information.

16. Further, we also find that ubiquitous two-way mobile broadband 5G service is likely to create a significant risk of harmful interference to ubiquitous NGSO FSS operations. The 5G terrestrial advocates' analysis rests on the speculative assumption that 5G and NGSO FSS operations will not be geographically near each other (i.e., 5G advocates offer studies that assume NGSO FSS will largely serve rural areas, and 5G will serve urban/suburban markets) without pointing to any basis for this assumption. We find that this unsupported assumption, which is not in line with current deployment practices and plans, renders the technical studies offered by the 5G advocates unpersuasive, and therefore such studies cannot serve as a basis on which to conclude that the public interest would be best served by allowing a new, ubiquitous 5G service into the band at this time. The Commission specifically asked whether geographic sharing could allow higher-power terrestrial operations in certain areas, and if so, how such geographic sharing should be structured.[42] But apart from studies based on non-binding, hypothetical assumptions, we note that 5G proponents did not offer any rules to limit their proposed 5G operations to less than all of the geographic areas authorized by their MVDDS licenses.

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Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, Attach. A, SpaceX Analysis of the Effect of Terrestrial Mobile Deployment on NGSO FSS Earth Stations and 5G Operations in the 12.2-12.7 GHz Band (filed June 21, 2022) (SpaceX June 21, 2022 Analysis); Letter from V. Noah Campbell, CEO, RS Access, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, Attach. A, Analysis of Starlink Submission Regarding the Effect of 5G Deployment on NGSO FSS (filed July 15, 2022) (RS Access July 15, 2022 RKF Response Study); Letter from Stacy Fuller, Senior Vice President, External Affairs, DIRECTV, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, Attach. A, 12 GHz Co-Frequency Interference from Terrestrial Mobile into DBS (filed July 18, 2022) (DIRECTV July 18, 2022 DBS Analysis); Letter from Kimberly M. Baum, Vice President, Spectrum Engineering & Strategy, WorldVu Satellites Limited, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, Annex, Monte Carlo Analyses of the Potential Impact of an Expanded Terrestrial Service on NGSO FSS Systems in the 12 GHz Band (filed July 11, 2022) (OneWeb July 11, 2022 Analyses); Letter from David Goldman, Senior Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, Exh. A, Evaluation of SpaceX Study Related to 12 GHz Interference from Terrestrial Mobile into Starlink (filed Oct. 4, 2022) (SpaceX Oct. 4, 2022 SAVID Report).

[40] DISH states that the presence of higher-power two-way mobile and fixed services at 12 GHz are possible and fully consistent with protecting DBS in the band. *See* DISH Comment at 1.

[41] AT&T has argued on behalf of DirecTV that RKF has not established that expanded terrestrial mobile operations could be added without causing harmful interference to DBS operations – a service which RKF's Study completely ignores, and a factor which alone, it argues, should nullify the study. *See* AT&T Reply at 14. AT&T asserts exclusion and/or coordination zones are neither practical nor feasible in the 12 GHz band as a means of protecting DBS because millions of DBS receivers are spread throughout the U.S. and are constantly being added, moved, or relocated. *See id.* at 26. AT&T states its concerns are not lessened just because DISH is not concerned about the possibility of harmful interference posed by terrestrial mobile operations. *See id.* at 22.

[42] *See 12.2 Notice,* 36 FCC Rcd at 624, para. 43.

1. 5G Interference to DBS

17. As a threshold matter, we find that a new ubiquitous 5G terrestrial mobile service cannot coexist with DBS operations in the band without a significant increase in the risk of harmful interference. As noted above, pursuant to the Table of Allocations, both terrestrial and NGSO FSS services are obligated to protect DBS from harmful interference.[43] The Commission has long recognized the public interest benefits that incumbent DBS services provide to millions of subscribers, and has required the other co-primary services in 12.2 GHz band to operate on a non-harmful interference basis with respect to DBS.[44] Congress, too, sought to ensure that DBS would not be subject to harmful interference from any new terrestrial service by requiring that the Commission "provide for an independent technical demonstration of any terrestrial service technology proposed by any entity that has filed an application to provide terrestrial service in the direct broadcast satellite frequency band to determine whether the terrestrial service technology proposed to be provided by that entity will cause harmful interference to any direct broadcast satellite service."[45] The Commission ultimately adopted rules for MVDDS based on the extensive record of a multi-year rulemaking proceeding,[46] which included the statutory mandates to avoid harmful interference to DBS[47] and an independent analysis[48] of potential MVDDS interference to DBS.[49] These rules include detailed frequency coordination procedures that require an MVDDS licensee to ensure that the EPFD[50] from a proposed transmitting antenna does not exceed the applicable EPFD limit[51] at any DBS receiving antenna of a "customer of record."[52] The MVDDS rules also include other limitations on signal emissions, transmitter power levels, and transmitter locations.[53] When an MVDDS

[43] *See supra* para. 4.

[44] *See generally MVDDS Second Report and Order.*

[45] *See Prevention of Interference to Direct Broadcast Satellite Services*, Pub. L. No. 106-553, App. B. Title. X, § 1012, 114 Stat. 2762, 2762A-128, 2762A-141 (2000) (*LOCAL TV Act* § 1012); *see also Rural Local Broadcast Signal Act,* Pub. L. No. 106-113, App. I., Title II, § 2002, 113 Stat. 1501, 1501A-544 (1999). In December 2018, however, this provision the LOCAL TV Act was stricken. Pub. L. 106-553, 114 Stat. 2762, 265-66 sec. 1012 Prevention of Interference to Direct Broadcast Satellite Services, stricken by Pub. L. 115-334, 132 Stat. 4490, 4777-78 sec. 6603 Amendments to Local TV Act.

[46] *See* ET Docket No. 98-206.

[47] *See LOCAL TV Act* § 1012(a).

[48] *Id.*

[49] *See, e.g., MVDDS Second Report and Order,* 17 FCC Rcd at 9635, para. 56 (citing MITRE Corporation, "Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band" (Apr. 18, 2001) (*MITRE Report*)).

[50] The EPFD is the power flux density produced at a DBS receive earth station, taking into account shielding effects and the off-axis discrimination of the receiving antenna assumed to be pointing at the appropriate DBS satellite(s) from the transmitting antenna of a MVDDS transmit station. *See* 47 CFR § 101.105(a)(4)(ii)(A).

[51] The Commission established different EPFD limits in four regions of the U.S., *see* 47 CFR § 101.105(a)(4)(ii)(B), mainly due to differences in rainfall in each region. *See, e.g., MVDDS Second Report and Order*, 17 FCC Rcd at 9691, para. 197.

[52] *See* 47 CFR § 101.105(a)(4)(ii) (referencing the procedures listed in 47 CFR § 101.1440). Among other things, an MVDDS licensee must conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers of record that may potentially be affected by the introduction of its MVDDS service and must coordinate with DBS. *See* 47 CFR § 101.1440(a)-(d).

[53] *See, e.g.*, *MVDDS Second Report and Order,* 17 FCC Rcd at 9634-9664, paras. 53-125; 9690-9695, paras. 196-209; 47 CFR §§ 25.139 (NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band); 25.208(k); 101.103; 101.105; 101.111; 101.113; 101.129; 101.1409; 101.1440. Notably, the rules limit the EIRP for MVDDS stations to 14 dBm per 24 megahertz. *See* 47 CFR §§ 101.113(a) note 11; 101.147(p). In the *MVDDS Second Report and Order,* the Commission explained that

(continued)

licensee proposes a new station, coordination with DBS is necessary to demonstrate that the relevant EPFD limit will not be exceeded at the DBS antenna of any DBS subscriber of record.[54] Once an MVDDS station has been successfully coordinated, however, the burden to ensure that DBS subscribers do not suffer interference from that MVDDS station shifts to the DBS operator—immediately for new subscribers[55] and after one year for customers of record.[56] The FCC determined that shifting this burden to DBS from MVDDS—only after successful coordination by the MVDDS operator in the first instance— was reasonable in light of the one-way, relatively low-power limit on MVDDS. In doing so, the Commission did not alter its previous finding that allowing two-way MVDDS operations in the band "would unnecessarily complicate the sharing scenario" and "significantly raise the potential for instances of interference among the operations" sharing the band.[57]

18. In its 2016 Petition for Rulemaking, the MVDDS 5G Coalition proposed that a new 5G mobile terrestrial service could also share with existing DBS in the 12.2 GHz band.[58] The Coalition provided two Coexistence studies that—through careful selection of mobile deployment areas, adjustments to radio frequency design parameters, use of geographic separation, clutter loss, and transmitter power constraints on terrestrial operations—purported to show that sharing with DBS would be possible.[59] In the first Coexistence Study, which studied three potential 5G use cases including point-to-point communications, mobile broadband, and indoor mobile use, the Coalition asserted that these potential uses could be engineered such that terrestrial users would not exceed the existing EPFD limit for MVDDS.[60] In its subsequent Coexistence 2 study, the Coalition studied a different building environment

(Continued from previous page)

placing a limit on MVDDS EIRP will ensure that DBS entities are not unduly hindered in their ability to acquire customers in areas in close proximity to MVDDS transmit facilities. Thus, we are not permitting higher powers over areas containing mountain ridges or over presently unpopulated regions because the higher power may cause too great of an exclusion zone for future DBS and NGSO FSS subscribers. We recognize that a higher power benefit for MVDDS providers would not offset the potential constraints placed on other service subscribers in the 12 GHz band. *MVDDS Second Report and Order*, 17 FCC Rcd at 9691-92, para.198.

See also id. at 9653, para. 88 (discussing the EIRP limit as a factor in adopting DBS mitigation obligations because "this power limit will not inhibit the introduction of new DBS customers [near] the MVDDS transmitting system, i.e., later-installed DBS receive antennas can be properly sited and shielded from the MVDDS signal").

[54] "DBS customers of record are those who had their DBS receive antennas installed prior to or within the 30 day period after notification to the DBS operator by the MVDDS licensee of the proposed MVDDS transmitting antenna site." 47 CFR § 101.1440(a).

[55] "DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s)." 47 CFR § 101.1440(e).

[56] Once the new MVDDS station is coordinated and begins operating, the MVDDS licensee must satisfy all complaints of interference to DBS customers of record received during a one-year period. 47 CFR § 101.1440(g).

[57] *MVDDS Second Report and Order,* 17 FCC Rcd at 9668, para. 137.

[58] *See supra* note 9.

[59] *See, e.g.*, Letter from Jeffrey H. Blum, Executive Vice President, External and Legislative Affairs, DISH, to Marlene Dortch, Secretary, FCC, Docket No. RM-11768, at 3 (filed Sept. 22, 2020) (DISH Sept. 22, 2020 Letter). *See also* Coexistence 1 at 35 (finding that "coexistence between MVDDS 5G operations and DBS receivers is possible with modest adjustments to MVDDS site locations and radiofrequency design parameters"); Coexistence 2 (revalidating the original coexistence study in different topological use-cases); Petition of MVDDS 5G Coalition for Petition to Deny, WT Docket No. 10-112, Exh. 1, MVDDS 12.2-12.7 GHz NGSO Coexistence Study (filed Aug. 15, 2016), https://www.fcc.gov/ecfs/document/10816077623256/1 (Coexistence 3 Aug. 15, 2016 Study).

[60] MVDDS 5G Coalition Petition Public Notice Comments at 4-6.

to show that even in a "more challenging" sharing environment, a new 5G service could protect DBS up to the level it "enjoys today from MVDDS licensees."[61] In the *12.2 Notice*, the Commission sought comment on whether the approach proposed by the MVDDS 5G Coalition in the 2016 Coexistence studies was feasible and the costs and benefits of such an approach.[62] The Commission sought comment on whether, and to what extent, the MVDDS 5G Coalition's proposals to license two-way, mobile operations in the band, and to eliminate the EIRP limit, would substantially redefine the scope of DBS operators' obligations and potential burdens under the current regime.[63] Additionally, the Commission asked how other factors—such as geographic separation, transmitter power constraints on terrestrial operations, and other siting parameters for flexible-use base stations—could minimize the risk of interference to DBS users.[64]

19. The advocates for a new 5G service in the band did not directly address the *12.2 Notice* questions but instead continued to rely on the 2016 Coexistence studies. Specifically, DISH stated that "the feasibility of sharing between DBS and 5G is demonstrated by two studies commissioned by the MVDDS 5G Coalition and prepared by [an] expert satellite engineer."[65] Similarly, RS Access stated that, "the coexistence studies submitted in the petition for rulemaking proceeding demonstrated that coexistence between DBS and terrestrial 5G is possible, even under a worst-case scenario."[66]

20. Opponents of the Coalition's proposals responded to the *12.2 Notice* by criticizing the Coexistence studies. AT&T, which owned DIRECTV, the only current DBS operator that does not hold MVDDS licenses, argued that the 2016 Coexistence studies, "too narrowly and simplistically defined the areas in which a DBS receiver could establish a direct line-of-sight path with DBS satellite orbital locations."[67] Moreover, AT&T argued that "these studies made inaccurate baseline assumptions regarding the nature of deployments and relied upon cherry-picked use cases that are not representative of real-world deployments."[68] Subsequently, DIRECTV, which AT&T spun off in 2021,[69] argued that the 2016 Coexistence studies are "outdated or irrelevant, and thus do not accurately reflect the characteristics of either a ubiquitous, modern, high-power terrestrial mobile service or DIRECTV's DBS service."[70] Moreover, SAVID LLC (SAVID), an engineering firm that DIRECTV hired to analyze 5G-DBS coexistence, found that, even if it made favorable assumptions of the terrestrial mobile systems, 5G service in the band would "cause extensive harmful interference to DIRECTV receivers, exceeding the limits currently in place to protect DBS customers by a factor of 100 to 100,000 over areas extending well beyond the intended coverage area of the mobile base stations."[71]

21. Based on the record in this proceeding, we find that a new ubiquitous 5G terrestrial mobile service cannot coexist with DBS operations in the band without a significant increase in the risk of

[61] MVDDS 5G Coalition Petition Public Notice Reply at 8-9.

[62] *See 12.2 Notice,* 36 FCC Rcd at 616-617, para. 24.

[63] *See 12.2 Notice,* 36 FCC Rcd at 616, para. 23.

[64] S*ee 12.2 Notice,* 36 FCC Rcd at 616, para. 23.

[65] DISH Comment at 3.

[66] RS Access Comment at 45.

[67] AT&T Reply at 11.

[68] AT&T Comment at 8.

[69] *See* AT&T, AT&T & TPG Close DIRECTV Transaction (Aug. 2, 2021), https://about.att.com/story/2021/att_directv.html; AT&T, AT&T Completes Acquisition of DIRECTV (July 24, 2015), https://about.att.com/story/att_completes_acquisition_of_directv.html.

[70] DIRECTV July 18, 2022 DBS Analysis at 1.

[71] DIRECTV July 18, 2022 DBS Analysis at 1.

harmful interference to the DBS operations. In particular, 5G advocates have not shown how such new mobile operations could meet or exceed the metric upon which the Commission based regional EPFD limits (ranging from −172.1 to −168.4 dBW/m^2/4kHz) that the FCC adopted to protect DBS from a fixed, lower power MVDDS service at every existing DBS subscriber's dish. In addition, because MVDDS is a fixed service, the rules were able to take advantage of the discrimination between southern facing DBS antennas and MVDDS antennas; a mobile service does not provide for such accommodations and results in a much more challenging interference environment than MVDDS. Moreover, to meet the existing EPFD limits, it appears that a mobile terrestrial service would need to be restricted to such low power levels that it is unlikely that any given base station could provide substantial geographic coverage or significant 5G service.[72] According to the Coexistence 1 study, 5G services could meet these EPFD limits only when using "newly available spectrum planning tools, and careful engineering of MVDDS systems" to isolate them from DBS receivers, either through geographic separation or terrain blocking.[73] Given the careful and exacting engineering that would be needed to meet these conditions, it is not apparent that terrestrial mobile systems, if installed, could be expanded by adding new base station locations in the future to meet increased consumer demands without significantly impacting DBS service. It is not reasonable to assume that ubiquitous two-way 5G mobile terrestrial service would meet these conditions consistently with respect to ubiquitous DBS which serves millions of customers in all areas of the United States where the location of 5G mobile units could be anywhere in the operator's service area, including right next to the DBS antenna.[74]

22. When DIRECTV commissioned a study from SAVID using what it deemed more reasonable assumptions than those of the 5G advocates, that study found that at power levels of 69 dBm/100 MHz[75] "mobile operations in the band would cause extensive and harmful interference to DIRECTV receivers."[76] DISH raises several criticisms of the SAVID study,[77] but even the MVDDS 5G Coalition's own study found that at 48 dBm/100 MHz in certain small areas actual harmful interference could occur if a DBS receive antenna were present.[78] We note that the power levels used in the Coexistence studies are substantially lower than the 62 dBm/MHz (82 dBm/100 MHz) generally permitted in most other terrestrial mobile bands which operate at lower frequencies with more favorable propagation characteristics and even less than the maximum 47 dBm/10 MHz (57 dBm/100 MHz)

[72] *See, e.g.*, DIRECTV July 18, 2022 DBS Analysis at 6. Largely to protect DBS receivers installed after an MVDDS transmitter is successfully coordinated with DBS, the MVDDS transmit power limit is 14 dBm/24 MHz (or 20 dBm/100 MHz). By comparison, the 2016 MVDDS 5G Coalition coexistence study assumed two-way terrestrial operations at 48 dBm/100 MHz, and the most recent RKF Study assumed a new 5G system would operate at 65 dBm/100 MHz, however, 5G advocates have not proposed any rules regarding power limits that they would deem reasonable to provide 5G service while still protecting incumbent DBS subscribers. We note that a 28-45dB higher transmit power for the proposed 5G service would make meeting the regional EPFD limits to existing DBS subscribers much more challenging and would significantly increase the burden on DBS operators to protect new or modified DBS subscriber receivers.

[73] MVDDS 5G Coalition Petition Public Notice Comments at 4-6.

[74] *See* DIRECTV July 18, 2022 DBS Analysis at 1 (the assumptions made by the Coexistence Studies "do not accurately reflect the characteristics of either an ubiquitous, modern, high-power terrestrial mobile service or DIRECTV's DBS service.").

[75] The base station EIRP is 75 dBm/100 MHz but the base station EIRP density is reduced by the base station TDD activity factor of 75% to 69dBm/100 MHz. *See* DIRECTV July 18, 2022 DBS Analysis at 4-5.

[76] DIRECTV July 18, 2022 DBS Analysis at 1.

[77] *See* Letter from Pantelis Michalopoulos, Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, at 2-3 (filed August 8, 2022) (DISH Aug. 8, 2022 Letter). Among other things, DISH questioned SAVID's assumptions about 5G transmit power and DBS dish location; its decision to "ignore" the potential for horizon nulling and time variability; and its failure to use LIDAR data to accurately account for clutter loss. *Id.* at 2-3.

[78] Coexistence 1 at 21.

permitted in the CBRS service designed specifically for small cell coverage. While the Coexistence studies and the SAVID study do not reach identical conclusions due to differing assumptions, collectively they illustrate that two-way mobile terrestrial 5G operations could not ubiquitously meet the regional EPFD limits that the FCC adopted to protect DBS. As DBS receivers may be located anywhere (and can be either roof-mounted or installed on the ground), and as the Coalition's own Coexistence studies shows the potential for harmful interference from 5G into DBS in some instances, we find that a new 5G service cannot adequately protect incumbent DBS operators in the band from a significant risk of harmful interference. Moreover, we note that DISH and other 5G advocates have not proposed or agreed to rules or limits on 5G operations (such as horizon nulling) that DISH suggests might reduce some risk of harmful interference into DBS. However, even if the 5G advocates agreed to use advanced techniques for interference mitigation, that would not solve the underlying problem that a new ubiquitous 5G terrestrial service poses a significant risk of harmful interference to DBS given the ubiquitous nature of both the existing DBS service and the proposed 5G service.

23. The 5G advocates do not address the increased coordination and DBS interference mitigation burdens that would be placed on DIRECTV and its tens of millions of subscribers if we were to permit mobile 5G operations in the 12.2 GHz band.[79] The original Coexistence study proposed to eliminate the MVDDS EIRP limit as duplicative of the EPFD limits, suggesting that keeping terrestrial signals below the applicable EPFD limit at all DBS antenna locations generally could avoid harmful interference to existing DBS subscribers regardless of the EIRP or whether the terrestrial operations were fixed or mobile, or one- or two-way.[80] However, the proposal to eliminate the EIRP limit would substantially redefine the scope of the burden on DBS operators, particularly for the deployment of additional DBS antennas in the future. While the current rules place the burden to ensure that new DBS subscribers do not suffer interference from previously coordinated MVDDS stations on DBS operators, we are not convinced that similarly shifting this burden from 5G to DBS, going forward, would be reasonable because protecting DBS receivers installed in the future from previously coordinated higher-power, two-way, 5G base and mobile stations would be significantly more burdensome—and in some scenarios impossible—than protecting new DBS receivers from previously coordinated, one-way, low-power, fixed MVDDS transmitters. Due to the mobile nature of the proposed 5G service, the location of devices cannot be determined and therefore cannot be avoided through coordination. Also, a two-way service requires the DBS operator to consider both incoming and outgoing signals. Finally, at higher powers, even using advanced techniques, a DBS receiver might not be able to coordinate operation near a 5G base station.

24. Additionally, given that all DBS earth stations look toward the southern sky for communication with geostationary orbit (GSO) space stations orbiting at the equatorial plane, and given that high-gain antennas are necessary for base stations, the *12.2 Notice* sought comment on whether base station location or antenna orientation can be adjusted to provide greater protection to DBS earth

[79] *See* Letter from Michael P. Goggin, Assistant Vice President – Senior Legal Counsel, AT&T, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, Appx. A, AT&T Response to the MVDDS 5G Coalition Technical Studies, at 4 (filed June 14, 2018) (AT&T June 14, 2018 *Ex Parte*) (arguing that eliminating the EIRP limit would render the EPFD analysis impossible to model and have the effect of shifting the burden of interference mitigation from MVDDS licensees to DBS licensees because the EIRP limits were established specifically to mitigate the potential impact of MVDDS operations on future DBS customers).

[80] *See* MVDDS 5G Coalition Petition at 19; MVDDS 5G Coalition Comments at 6, n.21 (citing Coexistence 1 at 4). AT&T had argued that there may be potential statutory issues including whether proposed two-way, mobile use of the band would require an independent technical analysis showing that DBS would be protected. AT&T Opposition at 2, n.4 (citing Section 1012 of the LOCAL TV Act). In December 2018, however, this provision of the LOCAL TV Act was stricken. Pub. L. 106-553, 114 Stat. 2762, 265-66 sec. 1012 Prevention of Interference to Direct Broadcast Satellite Services, *stricken by* Pub. L. 115-334, 132 Stat. 4490, 4777-78 sec. 6603 Amendments to Local TV Act.

stations.[81] The 5G advocates did not address this issue in their comments, replies, or additional studies, though DIRECTV, in its SAVID study, pointed out that lower earth-station elevation angles generally increase the potential for harmful interference from line-of-sight terrestrial transmitters while higher angles generally result in off-axis attenuation.[82] 5G terrestrial advocates did not address how DBS subscribers in the far northern U.S. could be protected from 5G interference, given the relatively low elevation angles required for subscriber dishes in these regions to point at DBS GSO satellites over the equator. For example, to point a dish in Fairbanks, AK, at a DIRECTV satellite at 95.1° W, an elevation angle of 6.47° is required. Even if the Commission excluded Alaska (as it did in addressing the 3.7 GHz band), an elevation angle of 12.21° is required to point a customer's dish in Bangor, ME, at a DISH satellite at 129°W, and an elevation angle of 17.67° is required in Seattle, WA, to point at a DISH satellite at 72.7°W. That failure of the 5G advocates to acknowledge or address the challenge of adequately protecting DBS customers whose location may render them uniquely susceptible to interference from 5G adds weight to our conclusion that the record does not support a finding that 5G can coexist with ubiquitous DBS dishes.

25. RS Access and DISH contend that concerns about interference to DBS should be given little weight because DISH is one of the country's two DBS providers and one of the advocates of a new 5G terrestrial service in the band. As such, RS Access and DISH state, "DISH would not join a proposal that endangers its own service to about 14 million households."[83] Admittedly, DISH expresses willingness to accept any resultant increase in coordination and DBS interference mitigation burdens in return for new authority to use its 82 MVDDS licenses for two-way mobile broadband.[84] This is not a case, however, where we can conclude—as with DISH's position as the sole licensee with respect to both services in connection with AWS-4 service—that the concerns about harmful interference are capable of resolution by one party. Here, as previously noted, DISH is not the only DBS provider in the band.[85] DISH's support for a new 5G service in the band does not address the potential for harmful interference to DIRECTV's tens of millions of subscribers. For instance, we note that DISH and DIRECTV dishes may

[81] *See 12.2 Notice*, 36 FCC Rcd at 617, para. 25.

[82] *See* DIRECTV July 18, 2022 DBS Analysis at 6 (noting SAVID's Study assumed that all DBS antennas were pointed toward DIRECTV's central orbital location at 101° W.L.—an assumption that ensures high elevation angles and does not, like the Peters Studies, seek out the worst possible angle over the full range of DBS orbital locations available); *see also* DIRECTV July 18, 2022 DBS Analysis at 3 (noting its deployments were modeled at Orlando, FL, which has high elevation angles to DBS satellites, adding conservatism to the analysis by tending to reduce indicated interference levels).

[83] MVDDS 5G Coalition Reply at 4.

[84] AT&T June 14, 2018 *Ex Parte* at 5-6 (arguing that because DISH holds MVDDS licenses in most of the major markets and has developed an alternative means of video distribution that does not require DBS capabilities, DISH may have less incentive to protect DBS operations than it once did). "At a minimum, DISH would now balance the impact of the Coalition's proposals on its existing and future DBS subscriber base against the advantages – arguably very profitable ones for existing MVDDS licensees—that would flow to its other services if the request is granted." *Id*. at 6. The Coalition responds that "DISH would have never been member of the Coalition if 5G terrestrial mobile services posed a meaningful risk of harmful interference to its DBS operations." Letter from MVDDS 5G Coalition to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, at 3-4 (filed Aug. 29, 2018) (MVDDS 5G Coalition Aug. 29, 2018 *Ex Parte*).

[85] In the 12.2 GHz band, as one of two DBS providers, DISH is in a different position than in the 2000-2020 and 2180-2200 GHz bands, where in 2011 it became the only Mobile Satellite Service (MSS) authorization holder. *See Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Docket 12-70, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16109-16110, para. 14 (2012). In that context, despite concerns that multiple satellite and terrestrial operators could not coexist in the same frequency band without interference, the Commission granted DISH authorization to use the 2 GHz MSS bands for terrestrial mobile operations, reasoning that a single operator could manage potential interference between two different systems in the band. *See id.* at 16165-16167, paras. 164-168.

not have an equal susceptibility to harmful interference in any given locale, because their respective subscribers may use different types of dishes (e.g., varying in size) aimed at one or several satellites at different orbital slots in the GSO arc. In short, DISH's DBS system architecture and structure, not to mention its motivations and business plans, may be very different from DIRECTV's. Thus, DISH's lack of concern about and/or willingness to work around potential harmful interference from 5G service in the band cannot be viewed as probative of the question of likely interference to DBS service.[86]

26. Finally, DISH argues that DIRECTV does not use the 12.2 GHz band extensively and mostly relies on other spectrum bands to provide service to its customers. Specifically, DISH claims that "[a] review of DIRECTV's satellites and orbital slots suggests that DIRECTV has more bandwidth outside the 12 GHz band than DISH has in the 12 GHz band."[87] DISH goes on to claim that DIRECTV serves its customers mainly using the Ka-band and Reverse Band working Broadcasting-Satellite Service payloads on its satellites at 99°, 101°, and 103° W.L. slots.[88] DIRECTV responds to this claim by pointing out that it "continues to rely heavily on the 12 GHz band" for delivery of its video service to a majority of its DBS customers throughout all fifty states, including customers receiving services on aircraft, boats and RVs, as well as through set-top boxes.[89] The record reflects that DIRECTV continues to use the 12.2 GHz band, having deployed a "12 GHz payload on a relatively new T16 satellite at 101° W.L."[90] Similarly, we find DISH's arguments about the recent decline of DBS subscribers—both DISH and DIRECTV—unavailing.[91] Regardless of overall subscription trends, each DBS operator continues to add new subscribers that can be located anywhere in the United States, and there continue to be millions of existing DBS customers whose service is entitled to protection from harmful interference.

2. 5G Interference to NGSO FSS

27. We also find that ubiquitous two-way mobile broadband 5G service is likely to create a significant risk of harmful interference to ubiquitous and increasing NGSO FSS operations.[92] While deployment of NGSO FSS service in the 12.2 GHz band is still developing, terrestrial 5G service in the band is hypothetical. For this reason, the 5G advocates supported their arguments by submitting Monte Carlo simulation analyses that attempt to model the coexistence of the two services.[93] However, 5G advocates did not then use the assumptions underlying their models as a basis for proposing specific rules that would enable coexistence. NGSO FSS operators responded by submitting their own Monte Carlo analyses which sought to correct various assumptions they claim to be erroneous. While the studies

[86] *See* AT&T Reply at 22 ("the fact that DISH may not worry about harmful interference from terrestrial, mobile, flexible-use operations does not lessen AT&T's concerns.").

[87] Letter from Pantelis Michalopoulos, Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, at 1 (filed Apr. 4, 2022); DISH Aug. 8, 2022 letter at 7.

[88] DISH Aug. 8, 2022 letter at 7.

[89] Letter from Stacy Fuller, Senior Vice President, External Affairs, DIRECTV, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, at 2 (filed May 3, 2022).

[90] DISH Aug. 8, 2022 letter at 8.

[91] DISH Aug. 8, 2022 letter at 6-7.

[92] *See* OneWeb July 11, 2022 Analyses at 2 ("Regardless of the assumptions made with respect to NGSO FSS and two-way terrestrial deployments, harmful interference from the proposed terrestrial service will not only exceed the existing interference envelope for MVDDS in the 12 GHz band, but will cause additional harmful interference"); *See also* SpaceX June 21, 2022 Analysis at 2 ("Yet even with …favorable assumptions, SpaceX customers could expect to experience harmful interference in the 12 GHz band the vast majority of the time, which would essentially preclude a consumer-oriented commercial satellite service in the band").

[93] A Monte Carlo (probabilistic) analysis is a simulation that uses random sampling and statistical modeling to estimate mathematical functions and mimic the operations of complex systems. RS Access Comment RKF Study I at 3, n.8 (citation omitted).

provided by the opposing sides contain many contradictory assumptions, ultimately they all agree on the fundamental point that there will be a significant risk of harmful interference to NGSO FSS operations without some geographic separation between a new two-way mobile broadband 5G service and NGSO FSS. The 5G advocates, however, do not propose to limit such new 5G terrestrial service geographically, nor is it clear how such limitations could be consistent with the nature of the 5G service for which they seek authorization. Neither are the authorizations granted to existing NGSO FSS operators limited to specific geographic areas. We therefore find it would not be in the public interest to allow for a new 5G service in the band as it would cause a significant risk of harmful interference to NGSO FSS where these services are deployed ubiquitously.

28. Significantly, we note that initially, the MVDDS 5G Coalition (i.e. the petitioners for a new 5G service in the 12.2 GHz band) argued that coexistence with NGSO FSS was not possible. Specifically, the Coexistence studies concluded that 5G terrestrial operations and NGSO FSS operations could not co-exist in the 12.2 GHz band and therefore, the MVDDS 5G Coalition Petition proposed to delete or demote the NGSO FSS allocation to a lower regulatory status with respect to 5G.[94] 5G advocates subsequently shifted their argument to claim that co-existence is possible with the new generation of NGSO FSS systems.[95] When the Commission issued the *12.2 Notice* in response to the Petition, it noted the public interest in protecting the significant investments made by NGSO FSS operators in the band. To determine whether NGSO FSS operations could coexist with a new 5G service, the *12.2 Notice* sought comment on what technical criteria would be necessary to protect NGSO FSS from harmful interference from high-powered, two-way mobile operations.[96] Specifically, the *12.2 Notice* asked which maximum power levels could be granted to new terrestrial operations within a framework of service-rule sharing that would still protect incumbents from harmful interference.[97] The *12.2 Notice* further inquired as to whether applying the existing MVDDS interference criteria[98] to new terrestrial systems would be sufficient to protect NGSO FSS operations.[99] Notably, it specifically inquired about whether subscribers of satellite services were typically located in more rural areas, the propagation characteristics and cell coverage areas that could be expected from 5G base stations in the band, and whether smaller-sized cells could mitigate potential interference from terrestrial services into DBS and NGSO FSS services.[100]

29. In response to the questions raised in the *12.2 Notice*, RS Access commissioned RKF, a systems engineering firm, to conduct a nationwide simulation of how NGSO FSS and terrestrial 5G systems might interact.[101] Ultimately, RKF provided two studies, both probabilistic Monte Carlo analyses meant to show that terrestrial 5G can coexist with NGSO FSS. In its first study, submitted in May 2021,

[94] The earlier MVDDS 5G Coalition studies found "MVDDS and NGSO [FSS] cannot effectively share the [12] GHz band, either under the current rules or under any new rules that may be added in response to the Coalition's petition." *See* Coexistence 3 Aug. 15, 2016 Study at 18.

[95] *See supra* paras. 6-7 for a discussion of NGSO FSS systems authorized by the Commission in recent years.

[96] *See 12.2 Notice,* 36 FCC Rcd at 619-620, para. 30.

[97] *See 12.2 Notice,* 36 FCC Rcd at 624, para. 42.

[98] *See* 47 CFR §§ 101.113(a) n.11, (f)(1); 101.147(p). *See also* 47 CFR §§ 101.105(a)(4)(i) (limiting the PFD level beyond 3 km from an MVDDS station to −135 dBW/m^2 in any 4 kHz measured and/or calculated at the surface of the earth), 101.129(b) (prohibiting location of MVDDS transmitting antennas within 10 km of any qualifying NGSO FSS receiver absent mutual agreement of the licensees).

[99] *See 12.2 Notice,* 36 FCC Rcd at 619-620, para. 30.

[100] *See 12.2 Notice,* 36 FCC Rcd at 624, para. 43.

[101] RS Access Comment at 33.

RKF used the 406 Partial Economic Area (PEA) geographic license areas[102] in the contiguous United States ("CONUS") to define where the 5G network will be deployed, and broke these into urban, suburban, and rural based on their population density thresholds.[103] Because the May 2021 RKF Monte Carlo analysis assumed the new 12.2 GHz terrestrial 5G service was likely to be deployed in the most densely populated areas with high demand for broadband service, RKF modeled deployment of 5G in census tracts with a population density greater than 7,500 people per square mile in each PEA. It explained, however, that if deployment in these "urban" density census tracts did not result in deployment to areas that encompassed 10% of a market's population, it added the most densely populated census tracts in each PEA until the area of deployment covered 10% of the market population.[104] RKF's terrestrial model assumed a 5G network of 49,997 terrestrial macro-cell base stations, [105] 89,970 fixed small-cell base stations,[106] 1,949,760 simultaneously active mobile devices[107] and 6,999 point-to-point backhaul links across CONUS.[108]

30. RKF then modeled the distribution of only SpaceX's NGSO FSS satellite terminals, although there are multiple NGSO FSS operators in the band. RKF's satellite model assumed SpaceX would deploy 2,500,000 satellite user terminals in both urban and rural areas,[109] but for this model, it used a different definition of rural and urban areas than it did for modeling terrestrial 5G operations.[110] RKF assumed the majority of NGSO FSS systems, or 1.65 million Starlink user terminals, would be dropped in random locations in non-metropolitan Rural Digital Opportunity Fund (RDOF) blocks[111] either won by

[102] *See Wireless Telecommunications Bureau Provides Details About Partial Economic Areas*, GN Docket No. 12-268, Public Notice, 29 FCC Rcd 6491 (2014).

[103] Urban has a population more than 7,500, suburban between 7,500 and 600, and rural fewer than 600. RS Access Comment RKF Study I at 6.

[104] RS Access Comment RKF Study I at 26-27.

[105] RS Access Comment RKF Study I at i, 13. Macro cells were deployed by multiplying the capped total of almost 50,000 macro cells by the ratio of the high population density area in a given PEA divided by the total such population in 12.2 GHz eligible areas in all PEAS – i.e., each PEA got a percentage of Macro-cell base stations equal to its proportion of the high population density areas across CONUS. *Id.* at 31. The model deployed Macro-cell base stations in three consecutive waves of decreasing inter site distances between them ranging from 500 meters to 200 meters between base stations for urban areas and 1732 meters between base stations for rural areas. *Id.* at 32.

[106] RS Access Comment RKF Study I at i, 34. Small cell base stations were deployed in the same manner as the macro cell base stations but with smaller distances between these and other small-cell base stations and or macro-cell base stations. *See id.* at 34-35.

[107] RS Access Comment RKF Study I at i, 38. The mobile devices were dropped uniformly but randomly within the base stations' coverage areas, and 80% of the mobile devices were assigned as indoor and 20% as outdoor. *Id.* at 37. Outdoor mobile devices were assumed to have a height above ground level (HAGL) of 1.5m. *Id.* at 37.

[108] RS Access Comment RKF Study I at i, 39. The Study estimated that there were a total of 2,500 macro-cell base stations and 4,499 small-cell base stations without fiber access and required microwave backhaul via the 12.2 GHz band, for a total of 6,999 links. *See id.* at 39. The Study assumed that in 2025, less than 5% of the cell-sites will use microwave backhaul in the 7 GHz to 40 GHz band and hence it distributed such use so that 5% of rural macro-cell base stations, 5% of other macro-cell base stations and 5% of small-cell base stations all use microwave backhaul. *See id.* at 38-39.

[109] RS Access Comment RKF Study I at 16-17.

[110] *Compare* RS Access Comment RKF Study I at 6 *with id.* at 8. RKF adopted the Census Bureau's definition of metropolitan areas as "urban areas" which include both cities and surrounding suburbs and it assumed and weighted deployment of satellite terminals to whatever was not metropolitan but instead a "rural" area. RS Access Comment RKF Study I at 8.

[111] RDOF blocks are census blocks made available by the Commission's Rural Digital Opportunity Fund auction where no provider is offering, or has committed to offer service of at least 25/3 Mbps. *See* FCC, Rural Digital

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Starlink or won by another bidder,[112] and that the remaining 850,000 Starlink terminals would be deployed in non-RDOF but also 'rural areas.'[113] Starlink terminals were allowed to be within 5 meters of 5G base stations, and the possibility technically exists that RKF's modeling could place NGSO FSS user terminals near 5G terrestrial base stations.[114] However, such proximity appears unlikely because the study endeavored to separate terrestrial 5G and satellite equipment.

31. In RKF's study, the potential for harmful interference to NGSO FSS from multiple elements of 5G systems is aggregated.[115] With respect to each of the NGSO FSS terminals modeled, RKF computed the aggregate interference power from all 5G emitters within 50 km, and compared the result to the interference-to-noise ratio (I/N) threshold to determine the extent to which the threshold would be

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Opportunity Fund Auction Information, Fact Sheet, https://www.fcc.gov/auction/904#:~:text=The%20Rural%20Digital%20Opportunity%20Fund%20will%20ensure%20that%20networks%20stand,applications%20as%20well%20as%20today's.

[112] RS Access Comment RKF Study I at 17. RKF states that for purposes of this analysis, the study assumes that SpaceX would have a penetration rate of 60% in non-metropolitan RDOF areas (or 327,511 terminals) in which they won funding. *Id.* Likewise, the study assumes a 30% penetration rate in non-metropolitan RDOF areas (or 1.3 million Starlink terminals) where another auction participant won funding. *Id.* For those metropolitan RDOF areas that SpaceX won, the study assumes a penetration rate of 15%, which amounts to an assumed 14,600 total Starlink terminals. *Id.* These assumptions, along with metropolitan RDOF areas that SpaceX did not win, resulted in an assumed 1.65 million Starlink terminal deployments. *Id.*

[113] RS Access Comment RKF Study I at 18. In this case of NGSO FSS terminals dropped over "non-RDOF" rural areas, 'rural' is defined for NGSO FSS operations the same as for 5G terrestrial deployments– less than 600 people per square mile. *Id.* at 17. NGSO FSS terminals are placed using the GPW population density database in proportion to the population density in more populous rural areas, which is similar to how the model sites 12 GHz terrestrial base stations. *Id.* In other words, the model's siting methodology for Starlink terminals in non-RDOF regions is more likely to place terminals in the more populous census tracts in rural areas, where they are deployed in proportion to the population therein using a population density database similar to the method used for siting terrestrial 5G equipment. *Id.* at 17-18, n.39.

[114] RS Access Comment RKF Study I at 18. 5G terrestrial base stations and NGSO FSS user terminals could be near each other, for example if the latter were placed in 'non-urban' areas from a Census Bureau perspective but if these areas still had populations greater than 7,500 persons and were "urban" under RKF's standards and therefore also receiving terrestrial 5G equipment. *Id.* at 11.

[115] RS Access Comment RKF Study I at 13. Each macro-cell base station beamforms a narrow beam toward each mobile device, and 5G transmissions are assumed to operate in time-division-duplex (TDD) mode with all the base stations coordinated such that uplink and downlink transmissions are synchronized. *Id.* The study assumes 5G backhaul operates in frequency-division-duplex (FDD) mode, and both uplink and downlink paths transmit continuously. *Id.* The base station antenna has 256 elements with a peak gain of 27.7 dBi which beamforms toward each mobile device but is constrained by the minimum antenna down tilt levels designed so that the gain directed toward a mobile device at 1.5m HAGL at the edge of coverage of the cell is 10 dB below the peak gain—allowing service at the edge of coverage; smalls cells have a peak gain of 15 dBi. RS Access May 19, 2022 RKF Study II at 11. Starlink terminal selects a random pointing direction from the distribution of simulated pointing directions. RS Access Comment RKF Study I at 13. Then the aggregate interference from all simultaneously active macro base station beams and small-cells on the downlink or all active mobile devices on the uplink, as well as the point-to-point backhaul uplink and downlink transmissions to each of the Starlink terminal receivers within 50 kilometers is computed. *Id.* RKF states the model calculates the emissions from macro-cell base stations as they beamform a transmission path toward each mobile device within the coverage area of each base station. Small-cell emissions are also calculated; these emissions are not beamformed to specific mobile devices, but are instead transmitted omnidirectionally with fixed down tilt and nulling. RS Access May 19, 2022 RKF Study II at 9. Then the model performs two separate aggregate interference power calculations: (1) from all simultaneously active macro base station beams, all small cells on the downlink, and all point-to-point backhaul transmissions, which continually transmit in FDD mode in both directions; and (2) from all active mobile devices on the uplink and all point-to-point backhaul transmissions. *Id.* at 9-10.

exceeded.[116] RKF asserted the objective of the simulation was to model a large number of statistically significant interference paths to evaluate the risk of interference to the Starlink terminals.[117] Initially, RKF found that about 0.888% of Starlink user terminals over CONUS could experience an event that exceeded a nominal ITU threshold of -8.5 dB.[118]

32. NGSO FSS operators, especially SpaceX, criticized many of the assumptions underlying RKF's 2021 study. As a result, in May 2022, RS Access submitted a revised study from RKF that modified certain parameters and specific assumptions to respond to the criticism.[119] RKF's revised study still relied heavily on geographic separation to find that a new 5G service could avoid causing harmful interference to incumbent NGSO FSS operations. The study still assumed that new 12.2 GHz 5G deployment and satellite terminals would have limited geographic overlap due to RKF's assessment of their respective use-cases—namely, that 12.2 GHz 5G services will be deployed most heavily in denser population centers, while satellite services are most useful in lower density population centers.[120] RKF's second study modeled the same number of base stations, mobile devices and point-to-point links,[121] and reached the conclusion that there would be no impact to 99.85% of NGSO FSS terminals by the terrestrial deployment it modeled. In particular, it asserted its study now found that only 0.15% of Starlink terminals which might hypothetically be deployed in the future throughout CONUS experienced an exceedance of the ITU's I/N threshold of -8.5 dB I/N from 5G operations in the 12.2-12.7 GHz portion of the NGSO FSS downlink band.[122] RKF asserted that several other factors contributed to the "highly favorable environment" for the coexistence of NGSO FSS and 5G systems, including the large antenna discrimination resulting from NGSO FSS antennas pointing with high elevation angle and the 5G base stations down tilted; interference mitigation achieved through 5G base station sidelobe suppression and antenna nulling toward the horizon; and, relatively localized 5G coverage due to the 12.2 GHz band's propagation characteristics.[123]

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[116] RS Access May 19, 2022 RKF Study II at 9-10.

[117] RS Access Comment RKF Study I at 10.

[118] RS Access Comment RKF Study I at 2.

[119] RS Access May 19, 2022 RKF Study II at 6.

[120] RS Access May 19, 2022 RKF Study II at iii.

[121] RS Access May 19, 2022 RKF Study II at 2-3.

[122] RS Access May 19, 2022 RKF Study II at 25. RKF asserts that the exceedance threshold of -12.2 dB, suggested by some critics, would not materially affect this study's findings. *Id.* at 26. Furthermore, it noted that any exceedance event that might occur would also affect no more than two of the up to eight available 250-megahertz Ku-band NGSO FSS channels at 10.7-12.7 GHz. *Id.* at 5, 25.

[123] RS Access May 19, 2022 RKF Study II at 7. There are several additional differences from the May 2021 and 2022 RKF Studies, albeit RKF emphasized three. First, whereas in its 2021 Study, RKF assumed Starlink terminals would point at satellites with look angles or elevation angels between 55° and 85°, in response to Starlink criticism, it assumes terminals will more frequently employ a lower elevation angle closer to the minimum authorized angle of 25°. *Id.* at 19. Second, RKF has changed the height above ground level for Starlink terminals from 20% sited at 4.5 meters and 80% at 1.5 meters, instead to 55% at 4.5 meters and 45% at 1.5 meters, in response to claims by Starlink that most users install their terminals "as high as possible." *Id.* at 20. Third, in response to a Starlink claim, a maximum off-axis antenna gain pattern from an ETSI standard for user terminals is used even though RKF asserts no party expressly claims that Starlink terminals perform at this standard and ETSI formulas results in a larger assumed off-axis gain, which in turn makes Starlink terminals more prone to exceedance events. *Id.* at 21-22. Other differences between the two studies include changes in the macro-cell and small-cell base station antenna patterns used, the peak EIRP of the macro cells decreased from 75 dBm/100 MHz to 65 dBm/100 MHz with gain of 27.7 dBi (small-cell base stations likewise increased their EIRP from 45 to 48 dBm/100 MHz but with an increased gain of 18 dBi and not 15 dBi which is accomplished through including horizon nulling and beamforming technologies), and the application of end-point clutter loss at the UEs with an HAGL of less than 3m and at small-cell base stations

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33. Both SpaceX and OneWeb submitted Monte Carlo analyses in response to the May 2022 RKF study commissioned by RS Access. SpaceX's Monte Carlo study modified certain key assumptions including basing buildout in an actual SpaceX market area in Las Vegas, Nevada upon its own asserted user data,[124] and buildout requirement for terrestrial mobile services of 70 percent of population, among other assertions.[125] SpaceX asserted its study showed an impact from interference from terrestrial mobile service that would degrade service to SpaceX's Starlink broadband terminals operating in the 12.2 GHz band more than 77 percent of the time, resulting in full outages 74 percent of the time.[126] Furthermore, SpaceX stated its study showed the impact of this harmful interference would extend at least 21 km (more than 13 miles) from the macro base station in unobstructed conditions even for best-case far-sidelobe-to-far-sidelobe coupling.[127] SpaceX used an antenna receiver pattern based upon the applicable ETSI standard (ETSI_EN_303_981 Class B WBES),[128] and the SpaceX analysis is based on seven 240 megahertz channels with 250 megahertz spacing from 10.95-12.7 GHz.[129] OneWeb's study similarly concluded that NGSO FSS user terminals cannot be deployed within the coverage area of a suburban macro-cell base station deployment without suffering from very high probability of harmful interference.[130]

34. While the analyses submitted by SpaceX and OneWeb have very little accord with the RKF analyses, all of these analyses agree, on some level, on one point: NGSO FSS user terminals will suffer harmful interference if they are operating in close proximity to 5G transmissions in the 12.2 GHz band. The RKF analyses come to this conclusion tacitly because rather than providing a calculation of the separation distance that would be necessary to protect NGSO FSS terminals from harmful emissions from 5G transmitters, these RKF analyses simply assume that in most situations 5G and NGSO FSS services will not be used by consumers in the same locations. Specifically, the RKF studies assume that 5G will most likely operate only in denser, more urban markets and NGSO FSS services will most likely serve only more rural subscribers. Satellite operators, and other parties in the record, have provided more express analyses than RKF of the potential for harmful interference to NGSO FSS operations from 5G operations in close proximity. For example, Google noted in its reply comments that although RKF's report did not separately present the potential interfering impact of a single UE (handset) located in the vicinity of a satellite terminal—because it assumed it was unlikely a handset would be near a satellite terminal—Google's calculations showed that when such a situation inevitably occurs, harmful interference can be expected out to a distance of as much as 0.2-1 km under realistic propagation assumptions, and as far as 3 km under worst-case conditions.[131] For its part, SpaceX asserted that satellite user terminals would be subjected to significant interference whenever located in the line of sight of a 5G base station. Further, SpaceX states that even for best-case far-sidelobe-to-far-sidelobe coupling, the effect of harmful interference (I/N > -12.2dB) between these two operations will extend up to 21.4 km (more than 13 miles) from the macro base station in unobstructed conditions.[132] According to SpaceX, its

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(typically deployed on poles in the vicinity of buildings), incorporating horizon nulling into macro cell base stations. *Id.* at 2.

[124] SpaceX June 21, 2022 Analysis at 3.

[125] SpaceX June 21, 2022 Analysis at 4.

[126] SpaceX June 21, 2022 Analysis at 2.

[127] SpaceX June 21, 2022 Analysis at 3.

[128] SpaceX June 21, 2022 Analysis at 8.

[129] SpaceX June 21, 2022 Analysis at 9.

[130] *See* OneWeb July 11, 2022 Analyses at 8-9.

[131] Google Reply at 14.

[132] SpaceX June 21, 2022 Analysis at 11. SpaceX used RKF's assumption that the macro base station has an input power of 41.3 dBW per 100 MHz per user and that the SpaceX user terminal has a -2 dBi far sidelobe gain and 200
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satellite user terminal is about 16 dB more sensitive to the interfering signal coming into its far sidelobes than the mobile UE is for its desired signal.[133] As a result, if a SpaceX user terminal is located in an area where a mobile device can receive a signal from the base station, the interfering signal its terminal receives will be much stronger than the desired signal received by the user device.[134] Because of their sensitivity, SpaceX states that even if its satellite terminal antennas are pointing only at high elevation angles so that terrestrial mobile signals are only received at large off-axis angles, interference will be overwhelming within the coverage area of a terrestrial base station.[135] SpaceX asserts that RKF recognized this point when it admitted that "Starlink terminals within the 5G coverage area typically suffered an exceedance."[136]

35. Although RKF did not provide specific analysis of the separation distances necessary to protect NGSO FSS user terminals from 5G transmissions, it argued that there would be a natural geographic separation between the two services, based on constraints on the number of user terminals an NGSO FSS system can deploy to one area. For example, the RKF study asserted that while an NGSO FSS licensee can deploy terminals in metropolitan areas, such as New York City or Los Angeles, satellite capacity constraints limit the total number of terminals NGSO FSS licensees can support in any one of these densely populated zones.[137] To illustrate this point, RKF has pointed to statements by Starlink's CEO that its service is not well suited to urban areas.[138] SpaceX does not directly address RKF's capacity argument but it responds that in the very few areas where RKF does consider terrestrial and NGSO FSS systems operating in close proximity, its model finds I/N ratios of 50 dB or more.[139] Furthermore, SpaceX argues that, by assuming only 1.07 percent of SpaceX user terminals would be deployed in urban areas, RKF significantly underestimated the effect of the proposed system on the existing Starlink customers.[140] OneWeb agrees that terrestrial separation of NGSO FSS and 5G terminals is an unrealistic assumption,[141] and states that it intends to focus its initial service on enterprise, government, and mobile

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K system noise temperature. SpaceX also assumed that the far sidelobe level of the macro base station is -2.3 dBi. RKF assumed a -30 dBi sidelobe performance for macro base stations. And, in its later Monte Carlo simulation, SpaceX used the same -30 dBi sidelobe floor for an individual sector antenna pattern, although SpaceX states this value is highly optimistic. *Id.*

[133] SpaceX June 21, 2022 Analysis at 13.

[134] SpaceX June 21, 2022 Analysis at 13. SpaceX argues that even for a mobile UE with a very modest signal-to-noise ratio of only 0 dB (i.e., at the UE noise floor), for the SpaceX user terminal, this mobile signal becomes an interferer that is 16 dB above the noise floor of the user terminal (I/N = 16 dB) and completely wipes out the desired signal. *Id.*

[135] SpaceX June 21, 2022 Analysis at 13.

[136] SpaceX June 21, 2022 Analysis at 13-14 (citing Letter from V. Noah Campbell, CEO, RS Access, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, Attach. A, Bringing 5G to the 12GHz Band, at 11 (filed June 1, 2022)).

[137] RS Access Comment RKF Study I at 8.

[138] RS Access May 19, 2022 RKF Study II at 25, n.65 (citing Jon Brodkin, *Elon Musk: Starlink latency will be good enough for competitive gaming*, Ars Technica (Mar. 10, 2020), https://bit.ly/3dUrbbu (quoting Elon Musk: "The challenge for anything that is space-based is that the size of the cell is gigantic … it's not good for high-density situations. We'll have some small number of customers in LA. But we can't do a lot of customers in LA because the bandwidth per cell is simply not high enough.")).

[139] SpaceX June 3, 2022 Response to Revised RKF Report at 3, n.9 (citing RS Access May 19, 2022 RKF Study II at 27 and Fig. 3-3).

[140] SpaceX June 21, 2022 Analysis at 9. SpaceX argues its actual distribution as based on the Las Vegas PEA is places 17% in urban areas, 37% in suburban areas and 46% in rural areas. *Id.*

network operator customers, which will require connectivity across metropolitan, suburban, and rural areas.[142]

36. We find that the 5G proponents' arguments that a new 5G service could adequately protect NGSO FSS operations from harmful interference rely too heavily on the unsupported assumption that there will be geographic separation between the services. Neither the FCC's rules governing NGSO FSS operations in the band nor the authorizations that the FCC has granted to NGSO FSS operators place any limitations of the sort assumed by 5G proponents on where these NGSO FSS services may operate.[143] NGSO FSS systems are not restricted to rural areas; indeed, SpaceX is currently authorized to deploy satellites throughout CONUS and for an unlimited number of its second-generation user terminals anywhere within the United States.[144] At this time, satellite operators' plans for, and rollout of service using, this band are still in the early stages, and operators have stated their intentions to serve urban and suburban areas.[145] Based on the current record, and our experience, we conclude that authorizing separate, ubiquitous satellite and terrestrial mobile systems in the same band would be significantly likely to result in harmful interference. Although the technical analyses that 5G advocates submitted made a number of hypothetical assumptions about how both a new 5G service and NGSO FSS service would be deployed, including 5G operating parameters that could reduce or mitigate interference, 5G proponents did not propose or agree to be bound by any specific rules to codify these assumptions. Given our conclusion that NGSO FSS terminals will experience harmful interference if placed in close proximity to terrestrial 5G deployment, and the lack of apparent disagreement by 5G advocates, we decline to authorize a new terrestrial 5G service in the 12.2 GHz band based on the current record.

37. As noted, the Monte Carlo analyses provided by the 5G advocates incorporate a set of assumed operating parameters intended, in addition to geographic separation, to reduce the possibility of harmful interference to NGSO FSS user terminals. These assumptions have become objects of criticism from NGSO FSS interests who argue that their adjustment can skew the interference picture away from showing the significant risk of harmful interference NGSO FSS systems would suffer. Below, we discuss some of the major disagreements on assumptions the parties have raised in the record. We caution, however, that these assumptions do not change our bottom-line decision declining to permit 5G operations in the 12.2 GHz band, due to the risks of harmful interference into NGSO FSS user terminals when the two services are in close proximity. Accordingly, other than in a few instances where we have pointed out that certain debates about assumptions may be missing critical information, we decline to weigh in concerning the relative merits of particular assumptions.

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[141] OneWeb has argued that suburban macro-cell base station deployments will result in harmful interference to NGSO FSS User Terminals when considering real world deployment scenarios. Letter from Brian D. Weimer, Counsel, OneWeb, to Marlene H. Dortch, WT Docket No. 20-443, Attach. B, 12 GHz NGSO FSS Earth station and Terrestrial Study, at 10 (filed Oct.7, 2022). *See also* OneWeb July 11, 2022 Analyses at 3 (notes omitted) ("The principle defect of the [RKF Study attached to Comments of] RS Access] is the assumption of geographical separation: that NGSO FSS user terminals will be deployed with a heavy bias towards rural areas while mobile base stations and devices will be heavily skewed towards urban areas. There is no real world justification for this bias.").

[142] OneWeb July 11, 2022 Analyses at 3, n.8.

[143] *See, e.g., Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809 (2017), recon. pending (*NGSO FSS Report and Order*).

[144] *See Space Exploration Holdings, LLC, Application For Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System, et al.,* Memorandum Opinion and Order and Authorization, 33 FCC Rcd 3391, para. 1 (2018); SpaceX June 21, 2022 Analysis at 14, n.41 (citing Radio Station Authorization, Call Sign E210127 (issued Nov. 10, 2021)).

[145] *See, e.g., supra* paras. 6-7.

38. *Ignoring Access to Other Bands and Other NGSO Deployments.* The RKF study assumed that Starlink is assigned eight 250 MHz channels from 10.7-12.7 GHz.[146] SpaceX argues its model did not incorporate use of the 10.7-10.95 GHz portion of the band due to regulatory constraints imposed to protect Radio Astronomy activity in the adjacent 10.6-10.7 GHz band.[147] Accordingly, the SpaceX analysis is based on seven 240 MHz channels with 250 MHz spacing from 10.95-12.7 GHz, whereas RKF appears to assume access to all bands. RS Access argues SpaceX's failure to incorporate the entire 10.7-12.7 GHz range into its calculations, and its use of only the 12.2-12.7 band for downlink increases the probability of interference exceedance experienced by Starlink terminals by a factor of four. RS Access finds this one of the most critical assumptions causing SpaceX's interference results to differ from its own. Furthermore, SpaceX argues RKF only models SpaceX terminal deployments and omits studies of any interference created by deployment of other NGSO FSS operations.[148]

39. *Height of Fixed Subscriber Antennas.* The height at which users mount their SpaceX user terminals has a dramatic effect on the interference to which they are subject—higher placement also means that they are more likely to receive more direct interference from mobile system base stations and UEs.[149] The May 2021 RKF Study assumed a distribution of NGSO FSS fixed subscriber terminals more heavily weighted toward ground installations—80% of Starlink terminals would have an HAGL at 1.5m, and 20% would have an HAGL of 4.5m. RKF's May 2022 study modified this assumption and instead assumed that 45% of Starlink terminals would be installed near ground level with an HAGL of 1.5m, and 55% of Starlink terminals would be installed on rooftops with an HAGL of 4.5m.[150] In response, SpaceX argued this modification still failed to reflect that the majority of SpaceX's customers deployed their antennas on rooftops to avoid obstructions, which significantly increases the likelihood of an unobstructed path for interference from a mobile service base station.[151] SpaceX argued its own informal customer surveys showed that most consumers mounted their antennas on a roof, and accordingly, SpaceX argued that 10% of its user terminals would be deployed at a height of 1.5m and 90% would be deployed at a height of 4.5m.[152] OneWeb agrees most NGSO FSS user terminals are expected to be deployed on rooftops and that such installation practices are consistent with decades of satellite infrastructure deployments.[153]

40. *Number of Macro Cells Deployed.* RKF's May 2022 study models 49,997 5G macro base stations throughout CONUS, distributed in the most densely populated areas of each PEA, comprising at least 10% of the population of the PEA.[154] SpaceX has criticized RKF's 10% coverage, contending that RKF's 10% minimum buildout assumption falls far below the 70% to 80% population coverage requirement the Commission has routinely applied to other recently allocated flexible use spectrum, and it asserts the lower percentage buildout results in less interference, thus skewing the results of RKF's study.[155] SpaceX assumed 3,215 macro base stations in the Las Vegas market in its study,[156]

[146] RS Access May 19, 2022 RKF Study II at 11. Thus, a "fully loaded" 12 GHz sector can serve a maximum of 20 mobile devices simultaneously. *Id.*

[147] SpaceX June 21, 2022 Analysis at 9.

[148] SpaceX June 21, 2022 Analysis at 4.

[149] SpaceX June 21, 2022 Analysis at 7.

[150] RS Access May 19, 2022 RKF Study II at 20.

[151] SpaceX June 21, 2022 Analysis at 8.

[152] SpaceX June 21, 2022 Analysis at 8.

[153] OneWeb July 11, 2022 Analyses at 5.

[154] RS Access Comment RKF Study I at 9.

[155] SpaceX June 3, 2022 Response to Revised RKF Report at 2. SpaceX has argued RKF's 10% buildout is also inconsistent with the economic study submitted by terrestrial mobile proponents, which "assume the terrestrial mobile operations in the 12GHz band will be available ubiquitously"[...]and is also inconsistent with the public

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which RKF criticized as being a vast overestimation of typical 5G deployment.[157] However, SAVID, which SpaceX hired to review the RKF studies, later argued that the number of macro base stations assumed in the SpaceX analysis did not have a material impact on the interference analysis results.[158] We note that looking at the UMFUS requirements for bands such as 24 GHz and above, licensees may fulfill their performance requirements in various ways, including providing mobile service to 40% of the population of the license area or by demonstrating coverage of at least 25% of their license's geographic area, or by showing the presence of equipment transmitting or receiving on the licensed spectrum in at least 25% of census tracts within the license area.[159] Accordingly, the relevant percentage buildout that would be required at 12 GHz may be different than either side's assumptions.[160]

41. *Technical Advancements.* SpaceX argues that the RKF studies incorporated unreasonable technical advancements into their models of 5G handsets, lowering the estimated interference received. For example, the May 2022 RKF study incorporated horizon nulling into the performance of 5G macro-cell base stations whereby 5G antennas can null the gain pattern at the horizon at all azimuth angles to mitigate ground-based interference to NGSO FSS terminals.[161] SpaceX argued "[this] is a neat trick when the terrestrial operator does not know where the NGSO FSS antennas are located."[162]

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interests claimed by members of its coalition that mobile services in 12 GHz band be required to serve rural customers, left behind by other 5G deployments." SpaceX June 21, 2022 Analysis at 11 (notes omitted).

[156] SpaceX June 21, 2022 Analysis at 15.

[157] *See* RS Access July 15, 2022 RKF Response Study at 9-10 ("If a 5G operator sought to meet Starlink's assumptions and built-out a nationwide 5G network that scaled the 540 POPs per cell Starlink modeled, the operator would have to deploy 610,000 base stations. By contrast, AT&T uses approximately 75,000 towers…to support a fully nationwide network…."). However, RKF also modeled 89,970 fixed small-cell base stations. RS Access Comment RKF Study I at 34. OneWeb notes that 12 GHz terrestrial mobile deployments, should they be allowed, would mostly be on small-cell base stations like the C-band and Ka-band flexible-use deployments for in-fill where more capacity is desired, and according to CTIA, up to 800,000 small cells could be deployed within the next 5 years. *See* OneWeb Reply at 19-20. OneWeb states that even if half of these projected small cells included the 12 GHz band, it would represent a five-fold increase over the RKF study's small-cell deployment assumptions, and the number of affected Starlink terminals could be 9 times higher than predicted for the small-cell base stations. *Id.* at 20-21.

[158] SpaceX Oct. 4, 2022 SAVID Report at 12.

[159] *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al*., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8088, para. 206 (2016) (stating that a licensee providing mobile service must provide coverage to 40 percent of the population of the license area); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al*., Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 5576, 5580, para. 8 (2018) (stating that licensees may fulfill the requirements of [the geographic area performance] metric either by demonstrating mobile or point-to-multipoint coverage of at least 25% of their license's geographic area, or by showing the presence of equipment transmitting or receiving on the licensed spectrum in at least 25% of census tracts within the license area… maintain[ing] parity with the 40% population coverage metric.).

[160] *See, e.g., infra* section V.C.6 (Performance Requirements) (seeking comment on the appropriate coverage percentages for the 12.7 GHz band).

[161] RS Access May 19, 2022 RKF Study II at 12.

[162] SpaceX argues RKF assumptions about nulling technology rely on letters from NOKIA, Ericsson, and Samsung, but it states that first none of these materials refer to any specific level of sidelobe suppression capability from nulling and only Samsung mentions nulling at all, and only as a means of avoiding interference to other mobile user equipment. SpaceX June 3, 2022 Response to Revised RKF Report at 5, n.23 (discussing RS Access May 19, 2022 RKF Study II at 12, n.40 (citing Letter from Jeffrey Marks, Vice President, Nokia, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Sept. 21, 2021); Letter from Mark Racek, Sr. Director of Spectrum Policy, Ericsson, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Sept. 13, 2021); Letter from Robert
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42. *Transmitter Power and Path Loss*. As noted previously, RKF changed its transmitter power from 75 dBm to 65 dBm in its second study.[163] SpaceX has supplied its own engineering report arguing that ITU WP 5D which studied terrestrial mobile in the 10-11 GHz bands also assumes 72.6 dBm/100 MHz as a typical base station EIRP value, making 75 dBm the more likely number.[164] OneWeb agrees that 75 dBm/100 MHz is more realistic.[165] Furthermore, the OneWeb study uses the probabilistic clutter model found in Recommendation ITU-R P.2108, which provides a clutter assumption that is expected to be greater than predicted in 10% of the cases, and applies clutter only at the user terminals and only for those terminals deployed at ground level (as opposed to those presumed to be clutter-free on rooftops). Tailored in this manner, OneWeb can temper the recommendation's potentially overly aggressive prediction of clutter losses, yet model expected clutter losses at a range of geographic locations.[166]

43. Furthermore, both the RKF and SpaceX analyses model path loss using 3GPP Specification 38.901, applying the Urban Macro-Cell model for both urban and suburban macro-cells at 30 meters to 1 km distance, the Rural Macro-Cell model for rural macro-cells at 30 meters to 5 km, and the Micro-Cell ("Umi") model for small-cells at 30 meter to 1 km distance.[167] However, SpaceX argues, RKF subtly understates the high interference line of sight cases in the 3GPP 38.901 model by using a single weighted average between NLOS (non-line of sight) and LOS (line of sight) path loss to represent both cases.[168] SpaceX argues RKF's approach of employing a weighted average to represent two distinctly different cases dramatically understates the line of sight cases that would actually occur under the 3GPP 38.901 model.[169] SAVID asserts that while the parties debate either -8.5 dBm or -12.2 dBm I/N, an alternative interference protection criterion based on the Power Flux Density (PFD) limit set by 47 CFR § 101.105(a)(4)15 should be considered.[170] In this regard, SAVID points out that the FCC specifically set the maximum PFD limit from an MVDDS service transmitting antenna in NGSO FSS

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Kubik, Sr. Director, Samsung, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Sept. 20, 2021)). Second, SpaceX argues these letters were filed in the C-band proceeding and that RKF provides no explanation to justify its approach to scaling for the much higher frequencies at 12 GHz. SpaceX June 3, 2022 Response to Revised RKF Report at 5. Furthermore, SpaceX notes there is no 12 GHz equipment and no ITU, 3GPP, or other performance standard for 12 GHz and RKF does not explain how it came up with its assumptions for this band. *Id.* Third, SpaceX argues the letters from Ericsson and Samsung mention grating lobes, but RKF does not consider their effects in its model. *Id.* Fourth, even if nulling were feasible in the 12 GHz band, SpaceX argues it is expensive technology that operators are unlikely to deploy voluntarily—yet no one has proposed to make such technology a regulatory requirement, making RKF's assumption that it will be deployed facially unreasonable. *Id.* And SpaceX argues that, fifth, RKF assumes that the macro base stations use a 256-element antenna, while both Nokia and Ericsson indicate that they contemplated the use of much smaller 96-element antennas, which would result in lower gain, wider beam width, worse sidelobes, and reduced nulling ability. *Id*.

[163] RS Access May 19, 2022 RKF Study II at 12.

[164] SpaceX Oct. 4, 2022 SAVID Report at 4 (citing Report on the 38th meeting of Working Party 5D (e-Meeting 7-18 June 2021), Annex 4.4 to Document 5D/716-E, https://www.itu.int/dms_ties/itu-r/md/19/wp5d/c/R19-WP5D-C-0716!H4-N4.04!MSW-E.docx, Table 3-1 entry 4.5 applicable to the 10-11 GHz band refers to Table 10 entry 1.9 which defines the typical values for antenna element input power of 22 dBm. Using the array parameters in Table 10 results in a typical BS EIRP of 72.6 dBm (in 100 MHz) which is comparable to the 75 dBm/100 MHz maximum EIRP density used in this analysis based on the FCC limit defined in 47 CFR § 30.202(a)).

[165] OneWeb July 11, 2022 Analyses at 6.

[166] OneWeb July 11, 2022 Analyses at 5-6.

[167] SpaceX June 21, 2022 Analysis at 9-10.

[168] SpaceX June 21, 2022 Analysis at 10.

[169] SpaceX June 21, 2022 Analysis at 10.

[170] SpaceX Oct. 4, 2022 SAVID Report at 5-6.

stations at 12.2-12.7 GHz at -135 dBW/m2 in 4 kHz at 3 km, which is the equivalent of an I/N threshold of -10.8 dB.[171] SAVID asserts this means that even for Starlink terminals in the most favorable location in the BS antenna pattern, there must be at least 25.5 dB of clutter loss to meet the FCC MVDDS PFD limit at 3 km separation.[172]

44. The parties' disagreements about the above assumptions underlying how two-way 5G mobile broadband and NGSO FSS user terminals should be modeled does not change our fundamental conclusion that there will be a significant risk of harmful interference to NGSO FSS where these services are deployed without adequate geographic separation. Even if the parties could agree about the values that should be assigned to each of the models' more minor assumptions, it would not change the models' more fundamental flawed assumption that the 5G and NGSO FSS services will be geographically separated. Rather, these disagreements present even more evidence of the difference in opinion between the parties as to the envisioned technical specifications of their respective operations. NGSO FSS continues to evolve and there is not enough data in the record on how these systems are currently configured and how the technical parameters will change over time as NGSO FSS systems add additional subscribers and continue to refine satellite technology. Furthermore, this band is not internationally harmonized for terrestrial 5G use and there is significant disagreement about what an operable 5G system would look like in this band. 5G terrestrial advocates have not demonstrated that it is in the public interest to restrict or impact NGSO FSS operations in urban/suburban markets—especially given that NGSO FSS systems are already serving customers. At this time, we do not see a path forward for adding a terrestrial mobile allocation to the band that adequately protects the incumbent satellite operators.

B. MVDDS Construction Filings

45. While we decline to adopt service rules to allow 5G terrestrial use of the 12.2 GHz band as originally proposed by the MVDDS coalition, we recognize that many of the MVDDS licensees in the band have filed the required buildout showings for the licenses they hold under the current framework. In the *Further Notice of Proposed Rulemaking* below, we seek comment, among other things, on the possibility of changes to the existing framework. We find it appropriate at this juncture to address any uncertainty as to the status of the existing MVDDS licenses under the current rules.

46. Today, eight companies (10 legal entities) hold 191 MVDDS licenses: two DISH subsidiaries hold 82 licenses; RS Access, a subsidiary of a Dell investment fund, holds 60 licenses; two Go Long Wireless entities hold a total of 25 licenses; and five smaller companies hold a total of 24 licenses.[173] As a construction requirement, MVDDS licensees must make a showing of substantial service at the end of five years into the license period and ten years into the license period.[174] We are aware of only one current commercial MVDDS deployment,[175] and most MVDDS licensees received two

[171] SpaceX Oct. 4, 2022 SAVID Report at 6.

[172] SpaceX Oct. 4, 2022 SAVID Report at 6. OneWeb stated it's OneWeb July 11, 2022 Analyses uses the probabilistic clutter model found in Recommendation ITU-R P.2108, which provides a clutter assumption that is expected to be greater than predicted in 10% of the cases, and applies clutter only at the user terminals and only for those terminals deployed at ground level (as opposed to those presumed to be clutter-free on rooftops). OneWeb July 11, 2022 Analyses at 5-6.

[173] The remaining 23 licenses automatically terminated for failure to meet the buildout requirement. *See Requests of Three Licensees of 22 Licenses in the Multichannel Video and Data Distribution Service for Extension of Time to Meet the Final Buildout Requirement for Providing Substantial Service under Section 101.1413 of the Commission's Rules, Applications of Three Licensees for Renewal of 22 Licenses in the Multichannel Video and Data Distribution Service*, Order, 33 FCC Rcd 10757 (WTB BD 2018), *recons. pending*. *See also* Blumenthal DTV LLC, Call Sign WQAR709 (Terminated July 26, 2014).

[174] 47 CFR § 101.1413.

[175] The licensee uses one station that transmits towards the relatively distant urban market and surrounding suburbs from a unique site, geographically and topographically, that allowed the Commission to waive certain technical rules (continued)

extensions of the MVDDS buildout requirement, which resulted in final deadlines in 2019.[176] All of the existing licensees have had buildout showings pending since 2019 for each of their licenses, which are available to view in the Commission's Universal Licensing System (ULS).[177] In the 191 pending filings, each licensee reports that it met the 2019 buildout requirement for each license, mostly by satisfying the safe harbor that the Commission established for MVDDS in 2002 of operating at least four transmitters per one million pops in each license area.[178] The Wireless Telecommunications Bureau staff's preliminary review of these construction filings is that they likely meet the safe harbor standard. Accordingly, we direct the Wireless Telecommunications Bureau to finalize the determination of whether the construction filings meet the safer harbor standard and if so to accept each of the pending MVDDS construction filings subject to the following condition: the Commission reserves the right to adopt additional buildout requirements for MVDDS if appropriate based on any revisions to the MVDDS rules adopted in response to the *Further Notice of Proposed Rulemaking*.

47. We further direct the Bureau to reconsider its denials of 2016 requests to extend buildout deadlines for 22 MVDDS licenses, and to extend the buildout deadlines for these licenses for 18 months from the effective date of this item, subject to the same condition above.[179] We believe that the unique circumstances of this proceeding, namely the uncertainty created by the MVDDS 5G Coalition's request for 5G terrestrial use, makes strict application of the buildout deadlines contrary to the public interest.[180] Eliminating the uncertainty over these 22 MVDDS licenses will best serve the public interest by promoting fuller participation in the record to be developed in response to the *Further Notice of Proposed Rulemaking* as well as by providing additional certainty regarding the status of these MVDDS licenses.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING IN WT DOCKET NO. 20-443

A. Expanded Licensed and Unlicensed Fixed Terrestrial Use of the 12.2-12.7 GHz Band

48. As described above, we decline to add a mobile allocation or adopt service rules for expanded terrestrial, high-powered, two-way mobile operations in the 12.2-12.7 GHz band. However, we remain interested in potential expanded terrestrial use of the band. Although the *12.2 Notice* focused on 5G service coexistence with the incumbents in the band, the Commission also asked how it could facilitate more robust terrestrial operations if it chose to maintain the existing regulatory framework,

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without increasing harmful interference to DBS or significantly increasing the area in which future NGSO FSS receivers would be precluded by this MVDDS transmitter. *See MDS Operations Inc., Request for Waiver of Certain Multichannel Video Distribution and Data Service Technical Rules for One Station in Sandia Part, New Mexico,* Order, 25 FCC Rcd 7963, 7968-69, paras. 13-14 (WTB 2010). From 2011 to 2013, a former MVDDS licensee offered fixed wireless broadband and voice service in Florida's Broward and Palm Beach counties. *See, e.g.,* http://www.multichannel.com/news/finance/cablevision-completes-omgfast-shutdown/271409.

[176] *See, e.g., Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, Order, 25 FCC Rcd 10097 (WTB 2010).

[177] *See* https://wireless2.fcc.gov/UlsApp/ApplicationSearch/searchAppl.jsp. Click on "Advanced Application Search" and select the following: Radio Service Code: "DV," Status: "2-Pending," Purpose: "NT." Scroll to bottom of page, Customize Your Results, and click on "Search." Ninety-five of the 191 filings were amended in 2020.

[178] *See id. See also MVDDS Second Report and Order*, 17 FCC Rcd at 9684, para. 177.

[179] *See Requests of Three Licensees of 22 Licenses in the Multichannel Video and Data Distribution Service for Extension of Time to Meet the Final Buildout Requirement for Providing Substantial Service under Section 101.1413 of the Commission's Rules, Applications of Three Licensees for Renewal of 22 Licenses in the Multichannel Video and Data Distribution Service*, Order, 33 FCC Rcd 10757 (WTB BD 2018), *recons. pending*.

[180] *See* 47 CFR §1.925(b)(3)(ii).

rather than permitting 5G in the band.[181] Based on comments in response to this question, below we seek further comment on several potential approaches the Commission could take to facilitate such robust use. In their responses to these inquiries, we strongly encourage commenters to provide specific proposals and detailed technical data to support their proposals. We note that several commenters suggest providing priority access to spectrum over Tribal lands to Tribal entities.[182] For each of the possible scenarios below that could involve assigning new, initial licenses, we seek comment on such a suggestion.

49. *Expanded Licensed Use*. We seek comment on the potential to expand terrestrial fixed use of the 12.2 GHz band. For example, should we consider permitting one-way, point-to-point or point-to-multipoint fixed links at a higher power than the current MVDDS rules allow? We seek comment on the following issues related to an updated one-way point-to-point or point-to-multipoint fixed link service. Is sharing between point-to-point or point-to-multipoint fixed links possible with NGSO systems whose receivers, unlike those in the DBS service, are not pointed exclusively at the geostationary satellite arc?[183] What power limit would be appropriate to allow for better expanded terrestrial use of this band while still protecting incumbent licensees? Should such expanded terrestrial rights be conferred on the existing incumbent MVDDS licensees, or are there alternative approaches for expanding terrestrial use opportunities in this band, such as site-based, individually coordinated operations relative to existing MVDDS operations? How should these operations be licensed, what technical data should be collected, and what type of technical limits and coordination requirements should be considered to allow necessary protections and coexistence with incumbent services in the band? Are there use cases or technologies that could be provided in a one-way point-to-multipoint type configuration, subject to higher power limits than MVDDS? To what extent would potential deployments of this type provide substantial benefits to the public? What would be the benefits to consumers and businesses of expanded one-way use, as compared to the benefits of other types or potential expanded terrestrial use cases or architectures?

50. We also seek comment on the possibility of allowing for two-way, point-to-point fixed links at a standard part 101 higher power limit.[184] Allowing this type of use could expand backhaul to

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[181] *See 12.2 Notice,* 36 FCC Rcd at 629, para. 60 ("If we maintain the current framework, should we make any revisions to the MVDDS technical rules within the existing regulatory framework so as to facilitate more robust terrestrial operations without causing harmful interference to satellite operations in the band?"); *id*. at n.154 (citing, *Wireless Telecommunications Bureau Seeks Comment on Petitions of Seven Licensees for Waiver of Multichannel Video Distribution and Data Service Technical Rules*, WT Docket No. 15-218, Public Notice, 30 FCC Rcd 9953 (WTB BD 2015) (petitioners seek waivers of 47 CFR §§ 101.113 note 11, 101.147(p), 101.1407, and 101.1411(a), to use the 12 GHz band for two-way, point-to-point operation at an EIRP up to 55 dBm)).

[182] *See* Letter from Joe Valandra, President & CEO, Tribal Ready, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352 *et al*. (filed May 10, 2023) (Tribal Ready May 10, 2023 *Ex Parte*) ("Tribal Ready respectfully requests that the 12 GHz band FNPRM, as well as any final rules for the band, provide for a set aside for Tribal entities to accelerate [fixed wireless broadband] on Tribal lands. The Commission has previously recognized the value of Tribal set asides in promoting deployment as recently as the 2.5 GHz band. The 12 GHz band can and should also be an option to help Native Americans close the digital divide."). *See also* Letter from Michael Calabrese, Director, Wireless Future Program, New America's Open Technology Institute, and Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352 *et al*. at 3 (filed May 10, 2023) (Open Technology Institute and Public Knowledge May 10, 2023 *Ex Parte*) ("our groups suggested that the Commission explicitly notice the possibility of opening a rural Tribal window in both the FNPRM and the NPRM. The Commission should ask whether to permit point-to-point or point-to-multipoint operations on tribal lands in 12.2 GHz on terms similar to those authorized to MVDDS licensees. This would require modification of the existing MVDDS licenses, but such modification would be a reasonable tradeoff for the expanded spectrum rights provided to the MVDDS licensees.").

[183] *See* Letter from Daniel C. H. Mah, SES Americom, Inc., W. Ray Rutngamlug, Associate General Counsel, Intelsat US, LLC, GN Docket No. 22-352, at B-1 (filed May 12, 2023) (citing Coexistence Studies).

[184] *See, e.g., 12.2 Notice,* 36 FCC Rcd at 629, para. 60 (citing *Wireless Telecommunications Bureau Seeks Comment on Petitions of Seven Licensees for Waiver of Multichannel Video Distribution and Data Service Technical Rules*, WT Docket No. 15-218, Public Notice, 30 FCC Rcd 9953 (WTB 2015) (petitioners seek waivers of 47 CFR §§

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support advanced broadband capacity. Should higher power two-way point-to-point type terrestrial rights be conferred on the existing incumbent geographic service area licensees? Or should we consider alternative approaches, such as site-based, individually coordinated operations relative to existing MVDDS operations? We note that several other similar bands are shared between NGSO FSS and two-way point-to-point operations, based on successful coordination of later-in-time operations.[185] Given the nature of highly directional point-to-point two-way operations, we ask whether terrestrial operations may be able to successfully co-exist with new and incumbent DBS and NGSO FSS operations? What would the interference protection status of NGSO FSS ESIMs be vis-à-vis these newly proposed services? Would it be manageable if rights were conferred on a first-in-time basis, since under the current authorization NGSO FSS ESIMs are not afforded protection? As a baseline, would consideration of the current technical standards in similar part 101 bands (11 GHz, 13 GHz) provide a basis for technical rules for two-way point-to-point operations in the 12.2 GHz band? If not, to what degree should they be limited or modified? How should two-way, point-to-point operations be licensed, what technical data should be collected, and what type of technical limits and coordination requirements should be considered to allow necessary protections and coexistence with incumbent services in the band? In particular, how should the burden of protecting new or modified DBS subscribers be assigned after a point-to-point link is successfully coordinated with existing DBS customers of record? How would new or modified NGSO FSS earth stations be protected? Additionally, should we consider the possibility of relocating 12.7 GHz band point-to-point operations to the 12.2 GHz band and, if so, how would this best be accomplished? Alternatively, would allowing expanded opportunities for disaggregation and partitioning promote more intensive use of the spectrum? Currently, the MVDDS rules do not allow disaggregation and limit partitioning to counties.[186] Should we revisit those rules to allow the option for 12.7 GHz point-to-point operators to lease spectrum larger in the 12.2 GHz band through partitioning and disaggregation?

51. Further, we also seek comment on the possibility of allowing two-way point-to-multipoint links. Specifically, we seek comment on the following issues related to an updated two-way point-to-multipoint fixed link service in the 12.2 GHz band. What power limit would be appropriate to allow for better expanded terrestrial use of this band while still protecting incumbent licensees? Should such expanded terrestrial rights be conferred on the existing incumbent MVDDS licensees, or are there alternative approaches for expanding terrestrial use opportunities in this band, such as site-based, individually coordinated operations relative to existing MVDDS operations? How should these operations be licensed, what technical data should be collected, and what type of technical limits and coordination requirements should be considered to allow necessary protections and coexistence with incumbent services in the band? Is there any adjustment necessary for the interference protection criteria of PFD and EPFD? If so, how should these metrics be calculated for an updated two-way point-to-point or point-to-multipoint fixed link service? Given that EPFD was originally conceived to promote sharing between NGSO FSS and GSO BSS and FSS systems,[187] is this the right metric for the present application? Is it appropriate to reconsider the underlying free space propagation assumption regarding the interference protection criteria? The Commission has previously determined that a combination of different propagation models is most appropriate for the determination of sharing metrics between fixed

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101.113 note 11, 101.147(p), 101.1407, and 101.1411(a), to use the 12 GHz band for two-way, point-to-point operation at an EIRP up to 55 dBm) (*MVDDS Waiver Notice*)).

[185] *See, e.g., Amendment of Parts 2 and 25 of the Commission's Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band, to Modernize Certain Rules Applicable to 17/24 GHz BSS Space Stations, and to Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations*, IB Docket Nos. 20-330 and 22-273, Report and Order and Notice of Proposed Rulemaking, FCC 22-63, 2022 WL 3138555 (Aug. 3, 2022).

[186] 47 CFR § 101.1415.

[187] *See First Report and Order and FNPRM*, 16 FCC Rcd at 11, para. 12-14.

microwave links and unlicensed devices.[188] Given the terrestrial nature of both interferer and victim, is a combination of different propagation models more suitable than relying only on a free space model? If so, what are the appropriate combinations of propagation models and their respective ranges of applicability? Please provide the necessary justification for use of the models. How is the definition of PFD and EPFD changed for the path-loss model other than the free space?[189] Are there any other impacts to consider as a result of using models other than the free space propagation model? For example, should we also consider changing the maximum EIRP allowed? If so, what is the maximum EIRP? Please provide the necessary justification for use of higher EIRP. Should there be multiple categories for the maximum EIRP? For example, should there be a maximum EIRP for the urban environment and another maximum EIRP for the rural environment? Are there use cases or technologies that could be provided in a two-way point-to-multipoint type configuration, subject to higher power limits than MVDDS? To what extent would potential deployments of this type provide substantial benefits to the public? What would be the benefits to consumers and businesses of expanded two-way use, as compared to the benefits of other types or potential expanded terrestrial use cases or architectures?

52. Alternatively, adding indoor-only underlay use of the band could allow for greater control and access assurances that could help stimulate IoT, private Long Term Evolution (LTE) or New Radio (NR) market in the band.[190] If we were to consider such expanded terrestrial authorization in the band, should that authorization be awarded to the existing incumbent MVDDS licensees, or should this type of authorization be available to businessowners/landowners for the operation of private networks/IoT such as on physical campuses or industrial complexes? If such authorizations were conveyed to businessowners/landowners, how would they intersect with the authorizations held by existing MVDDS incumbent licensees, and should the MVDDS authorizations also be expanded? If such rights for a different type of terrestrial use were afforded to businessowners/landowners, should they be licensed-by-rule? What type of coordination mechanism might allow for such use, e.g. standard coordination notifying incumbent services within a specific distance of the proposed facilities of the planned technical parameters of the proposed operation? What interference thresholds or limitations would such indoor-only unlicensed operations need to observe to adequately protect MVDDS, DBS and NGSO FSS operations from harmful interference? Should rights be conveyed to terrestrial licensees on a first-in-time basis, similar to those that currently exist in our rules, or with proposed modifications, in order to provide certainty for licensees that invest in and operate these systems?

53. *Unlicensed Use*. We seek comment on whether, and, if so, how, to permit unlicensed use of the 12.2 GHz band, a step that multiple parties advocate.[191] The unlicensed advocates claim that a low-power, indoor-only unlicensed underlay in the 12.2 GHz band would create additional capacity for Internet of Things (IoT) uses.[192] Part 15 sets out the regulations under which an intentional, unintentional, or incidental radiator may be operated without an individual license.[193] Under the rules for unlicensed

[188] *See Unlicensed use of the 6 GHz Band,* FCC20-51A1_Rcd at 3874. Para. 63.

[189] PFD for general path-loss can be defined as $\text{PFD} = \text{EIRP-PL} + 10*\log_{10}(4*\pi)-20*\log_{10}(\lambda)$. Also EPFD can be expressed in terms of PFD as $\text{EPFD} = \text{PFD}* G_e(\theta_e, \varphi_e)\ I/G_{e,max}$, where PFD is defined in the previous sentence.

[190] *See 12.2 Notice*, 36 FCC Rcd at 622, para. 39 (stating that in an underlay approach any additional terrestrial operations likely would need to be authorized at low power and would need to operate on an opportunistic basis, not causing harmful interference to—nor seeking protection from harmful interference by—the incumbent primary services in the band.).

[191] Boeing Reply at 10; NCTA Reply at 2; Letter from Chip Pickering, CEO, Incompas, and Joe Lockhart, Partner, Rational 360, to Acting Chairwoman Rosenworcel and Commissioners, FCC, Docket No. 20-443, Attach. A, Ensuring U.S. Leadership in 5G, at 4 (filed Apr. 28, 2021); Dynamic Spectrum Alliance Comment at 6-7; Federated Wireless Comment at 3.

[192] Comments of Public Interest Organizations (New America's Open Technology Institute, et. al.), at 2, 17.

[193] *See* 47 CFR § 15.1(a).

intentional radiators,[194] the 10.6-12.7 GHz band is designated as "restricted."[195] Unless expressly permitted by rule or waiver, unlicensed devices are not allowed to intentionally radiate energy into a restricted band, in order to protect sensitive radio services from harmful interference.[196] We seek comment on the benefits and costs of removing the 12.2 GHz band from the list of restricted bands. What type of applications (e.g. IoT, local networking, etc.) and from what types of devices (e.g. indoor access points, mobile client devices, etc.) would unlicensed operations most benefit in the 12.2 GHz band?

54. We invite commenters to discuss whether unlicensed use may be permitted within the 12.2—12.7 GHz band under provisions that could be implemented under our part 15 rules. Those rules require that unlicensed devices protect the licensed incumbent services[197] which, in this case, includes DBS, NGSO FSS, and MVDDS. We note that the Commission has rules for unlicensed low power indoor devices in the 6 GHz band that could serve as a model for unlicensed use in this band. Under those rules, the Commission found that low-power indoor devices could take advantage of building entry loss to protect incumbent fixed service users.[198] Would these rules provide an appropriate model for indoor devices in the 12.2 GHz band?[199] Under the 6 GHz low power indoor rules, unlicensed access points may operate at 5 dBm/MHz EIRP while client devices are limited to -1 dBm/MHz. The unlicensed access points must be supplied power from a wired connection, may not be weatherized, must use an integrated antenna, and must have a label indicating that use is restricted to indoors. The client devices must operate only under the control of an access point. If the Commission allowed indoor unlicensed use in the 12.2 GHz band, what rules should be adopted to mitigate the risk of harmful interference from indoor unlicensed devices to incumbent services? For example, would the same rules that we rely on to keep 6 GHz low-power indoor devices inside be replicated here to provide signal attenuation between indoor unlicensed devices and outdoor DBS, NGSO FSS, and MVDDS receive antennas? Noting that the

[194] *See* 47 CFR part 15, subpart C.

[195] 47 CFR § 15.205(a) (designates bands of operation in which only spurious emissions are permitted under part 15).

[196] *See, e.g.*, *Amendment of Part 15 of the Commission's Rules to Establish Regulations for Tank Level Probing Radars in the Frequency Band 77-81 GHz*; *Amendment of Part 15 of the Commission's Rules To Establish Regulations for Level Probing Radars and Tank Level Probing Radars in the Frequency Bands 5.925 7.250 GHz, 24.05 29.00 GHz and 75 85 GHz*, ET Docket No. 10-23, Report and Order, (FCC 14-2) 29 FCC Rcd 761, 773 para. 26, n.73 (2014) (citing Revision of the Rules Regarding Operation of Radio Frequency Devices Without an Individual License, First Report and Order, GEN Docket 87-389, 4 FCC Rcd 3493 (1989), 47 CFR § 15.205(a)).

[197] 47 CFR § 15.5(b).

[198] *See Unlicensed Use of the 6 GHz Band and Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, ET Docket No. 18-295; GN Docket No. 17-183, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852, 3888, para. 96, *et seq.* (2020), *aff'd in part*, *remanded in part sub nom. AT&T Services, Inc. v. FCC*, 21 F.4th 841 (D.C. Cir. 2021).

[199] We note that in advocating for 5G authorization in the 12.2 GHz band, the MVDDS Coalition's first Coexistence study argued that losses as signals in the 12.2-12.7 GHz band travel through one or more building walls generally provide sufficient attenuation to ensure EPFD limits remain below current limits. Coexistence 1 at 27. Where building attenuation alone might prove insufficient, the Coexistence study stated that "careful placement and power control can prevent the maximum EPFD levels from being exceeded outside of the building envelope to ensure protection of DBS receive antennas." Coexistence 1 at 27. Specifically, the Coexistence study asserted that signals from base stations placed inside one interior wall would have 50 dB attenuation resulting from passing through an interior and exterior wall, while mobile units more likely to travel toward building edges would experience 30 dB. Coexistence 1 at 26. Furthermore, the study noted that 5G network operators could manage interference through controlling the transmission location of 5G mobile devices through "geofencing," which involves the use of location information from the device to assign unit geographical boundaries to the permitted area of operation. Coexistence 1 at 26-27. These mitigation techniques would allow the broadband operator to prevent 5G MVDDS mobile devices from venturing into areas that might offer insufficient attenuation to one or more DBS receivers outside of the building exterior." Coexistence 1 at 27.

incumbent services are generally trying to receive a weak signal from a satellite, would the expected building entry loss be adequate to protect those services? What technical limitations such as power levels, bandwidth restrictions, or out-of-band emission limits would be appropriate in conjunction with an indoor-only requirement to protect the incumbent services? Could we permit less restrictive unlicensed use (e.g., higher indoor power levels, outdoor use, etc.) with a label warning to alert consumers that use near a DBS, NGSO FSS, or MVDDS receive site could result in harmful interference to the consumer device? For example, this would allow DBS subscribers to decide about whether to use such a device in their homes knowing there is a potential interference risk. Are there other potential interference mitigation techniques or system design requirements we should consider to protect incumbent services, such as geofencing capability?[200] We invite commenters to submit engineering analysis or measurement data addressing the potential for such indoor unlicensed devices to cause harmful interference to DBS, NGSO FSS, and MVDDS receivers.

55. *Other Technology-based Sharing*. In addition, we seek comment on whether there may be opportunities to take advantage of technological advancements to accommodate expanded terrestrial capabilities in the 12.2 GHz band. For example, could dynamic, database-driven coordination capabilities such as have been implemented in other frequency bands (e.g., 6 GHz unlicensed and 3.5 GHz Citizens Broadband Radio Service) be implemented in the 12.2 GHz band? Would another type of frequency management system allow for a greater opportunity for expanded terrestrial services to develop within the band while affording protection to incumbent satellite and terrestrial services? What technical data would need to be collected to support such a system? DBS operators are currently required to maintain data on current subscriber locations; NGSO FSS operators have no similar requirement to track consumer terminal location data, and deployments in the band continue to increase. Would additional technical data need to be collected or shared among the licensees so that an advanced frequency management system could effectively manage shared use and prevent interference exceedance to the different services in the band? What parameters should we put in place to ensure that any obligations for a new managed sharing regime in the band would not be overly cumbersome, particularly to the DBS and NGSO FSS incumbents? We seek comment on what type of frequency management system might be used to control access to, and manage potential interference in, the 12.2 GHz band. Who should have ownership or oversight of such systems? How should frequency management system or database operators be selected, and what should be the requirements for such roles? Would there be any interest in operating such systems or databases? What type of testing requirements should there be on these types of systems? How might the associated costs be addressed, and who should bear the burden of those costs? For instance, should new terrestrial fixed services bear all the costs, or should part of this cost be shared by the NGSO FSS and DBS incumbents in the band?

56. We specifically seek comment on the use of Automated Frequency Coordination (AFC) systems, which were adopted for unlicensed outdoor deployments in the 6 GHz band based on several considerations that were specific to that band. Accordingly, we seek comment on whether similar, or otherwise compelling, considerations would support use of an AFC system in the 12.2 GHz band, and also seek comment about the extent to which these considerations may also be applicable to other frequency coordination management and database system concepts. Among the most relevant considerations are what types of propagation models are the most appropriate, considering the incumbents in this band, including DBS and NGSO FSS satellite systems? What protection criteria would be required specific to each service, i.e., DBS, NGSO FSS, and MVDDS? How can modelling of the incumbent services be adequately accomplished, particularly considering the potential complexity of NGSO FSS systems, and their associated Earth stations that track satellites that are in motion? What device location information might be required, and what method would be appropriate to obtain such information? For instance, should the Commission consider requiring automated entry of some or all of the information, or permit manually entered information by a certified installer of the device? How would AFC systems be

[200] Coexistence 1 at 26-27.

able to periodically verify frequency availability considering the incumbent DBS and NGSO FSS satellite operators and the lack of information as discussed above? Moreover, is a periodic re-check interval an appropriate method to determine changes in frequency availability information and, if so, what should be the maximum permissible interval for verifying frequency availability? If not, we seek comment on other alternatives that could identify frequency availability. Should aggregate interference be calculated by an AFC system or is it sufficient to just consider individual devices? How should devices be registered, and what collected information should be required? Should an AFC system be able to give commands to shut down devices when changes in spectrum use occur? What system security concerns would need to be addressed? If this concept were to be considered sufficient, technical information would need to be available to such frequency management systems—specifically the technical information that is not currently sufficiently collected, or collected at all, from DBS and NGSO FSS respectively. If this concept was to be considered at what future date should DBS and NGSO FSS be required to provide the required data? We seek comment on these possible alternatives.

B. Promoting Digital Equity and Inclusion

57. The Commission, as part of its continuing effort to advance digital equity for all,[201] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[202] 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.

V. NOTICE OF PROPOSED RULEMAKING IN GN DOCKET NO. 22-352[203]

A. Expanded Use of the 12.7-13.25 GHz Band

1. Repurposing for Mobile Broadband or Other Expanded Use

58. As noted above, on October 28, 2022, the Commission released its *12.7 NOI* to broadly seek information on the current use of the 12.7 GHz band, how the Commission could encourage more efficient and intensive use of the band, and whether the band is suitable for mobile broadband or other expanded use.[204] The 12.7 GHz band has several attributes that argue in favor of its repurposing for advanced services: it is already allocated for terrestrial mobile service on a primary basis domestically, it is only lightly used by the Fixed (FS) and Fixed Satellite (FSS) and Mobile Services (MS), and there is only a single Federal incumbent at one site.

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[201] 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.

[202] 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).

[203] In sections V and VI, record references and citations refer to GN Docket No. 22-352, unless otherwise noted.

[204] *12.7 NOI* at *1, para. 2.

59. In the United States, the 12.7 GHz band is allocated on a primary basis for non-Federal use to FS, FSS (Earth-to-space), and the MS.[205] The band is shared among Fixed Microwave Services (FS—part 101), Broadcast Auxiliary Services (fixed and mobile BAS—part 74), fixed and mobile Cable Television Relay Services (CARS—part 78), and Fixed Satellite Services (FSS—part 25).[206] Based on the Commission's licensing records, these services in the 12.7 GHz band include approximately 1,846 terrestrial service call signs that authorize a total of approximately 2,070 fixed point-to-point paths, and approximately 400 licenses that authorize mobile TV pickup operations.[207] There are also 27 call signs for FSS space stations and 43 call signs for FSS earth stations.[208] Terrestrial and space services in the 12.7 GHz band are subject to prior-coordination requirements to avoid interference.[209] The 12.7 GHz band has only limited Federal use. Specifically, the National Aeronautics and Space Administration (NASA) operates a receive-only earth station for its Deep Space Network (DSN) at Goldstone, California, that is authorized to receive transmissions across the entire 12.7 GHz band.[210]

60. Given the existing incumbent uses of the band, the *12.7 NOI* sought comment on two potential options for making some or all of the band available for mobile broadband and other expanded uses: (1) repurposing some or all of the band for such use with sunset of some or all incumbent services and relocation and cost-sharing requirements for new services,[211] and (2) potential sharing methods among new and incumbent services.[212] In connection with these potential options, the *12.7 NOI* asked about potential licensing approaches to facilitate deployment of new mobile broadband or other expanded use of the band.[213] The *12.7 NOI* also sought comment on an appropriate protection level that new operations in the 12.7 GHz band would have to provide incumbent services in the lower and upper

[205] 47 CFR § 2.106. The international and domestic allocations are similar for the 12.75-13.25 GHz band in most respects. However, space-to-Earth transmissions are permitted at 12.7-12.75 GHz in ITU Regions 1 and 3 but not in Region 2. 47 CFR § 2.106, International Table. Domestically, Footnote NG52 of the U.S. Table precludes most GSO FSS systems from using the band for domestic services and limits the deployment of FSS earth stations in the band. *Id*. at n.NG52.

[206] *See* 47 CFR pt. 25 (§§ 25.101-25.702), pt. 74 (§§ 74.600-74.690), pt. 78 (§§ 78.1-78.115), pt. 101 (§§ 101.1-101.1527).

[207] Licensing data for fixed and mobile BAS under part 74 and Fixed Microwave under part 101 is in the Universal Licensing System (ULS). Licensing data for fixed and mobile CARS is in the Cable Operations and Licensing System (COALS). These statistics are based on a review of ULS on April 26, 2023. There are also approximately 65 fixed or mobile CARS call signs in COALS.

[208] FSS data are in the International Bureau Electronic Filing System (MyIBFS). These statistics are based on a review of MyIBFS on April 26, 2023.

[209] *See* 47 CFR §§ 25.115(a)(6)(i), 101.21(f). The administrative aspects of the coordination process are set forth in 47 CFR § 101.103 for coordinating terrestrial stations with earth stations, and in 47 CFR § 25.203 for coordinating earth stations with terrestrial stations. *See also id.* § 25.251(a). The coordination procedures specified in 47 CFR § 101.103 and § 25.203 are applicable for coordinating between earth stations and fixed microwave links, and the information provided during coordination is set forth in 47 CFR § 25.203(c)(2) and 101.103(d)(2)(ii).

[210] *See* 47 CFR § 2.106 & n.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)."). For additional details concerning the domestic and international allocations, *see 12.7 NOI* at *2-*3, paras. 4-6. For additional details on current uses, *see 12.7 NOI* at *2-*5, paras. 4-11 (II.B. Current uses of the 12.7-13.25 GHz (12.7 GHz) Band).

[211] *See 12.7 NOI* at *5, *6-*9, *9-*11, paras. 12, 14-24, 25-30.

[212] *See 12.7 NOI* at *6-*9, paras. 14-24 (III.A. Potential Methods for Sharing the Band), *9-*11, paras. 25-30 (III.B. Sunset of Incumbent Services, Relocation and Cost-Sharing for New Services).

[213] *See 12.7 NOI* at *11-*12, paras. 31-32 (III.C. Potential Licensing Approaches, Service and Technical Rules), Specifically, the Commission asked whether to assign new licenses on an exclusive-use basis, through the issuance of new geographic-area overlay licenses or consider other licensing approaches, such as non-exclusive, site-based, or a tiered approach such as that used in the Citizens Broadband Radio Service. *Id*. at *11, para. 31.

adjacent bands.[214] The *12.7 NOI* also sought comment on the costs and benefits that should be considered in deciding whether to promote new service opportunities in the band through repurposing/relocation or sharing as well as whether we should consider some combination of these methods.[215]

61. In response to the *12.7 NOI*, very few parties have argued that the current balance of incumbents in the 12.7 GHz band should be left unchanged and that the band should remain untouched. There is substantial support for repurposing these frequencies for mobile broadband or other expanded use and a significant number argue that the band should be used for exclusive, fixed or mobile, flexible high-powered use.[216] Commenters assert that the next-generation wireless technologies underpinning 5G, 5G Advanced, and 6G services will rely depend on extremely high data rates, and the reliability, low latency, and capacity that the 12.7 GHz band spectrum can provide.[217] In addition, standardization is already underway for 6G, and the 12.7 GHz band has considerable capacity and opportunity for channel reuse, making it a good fit for future 6G technologies,[218] including high-speed, low-latency, bandwidth-intensive applications, such as augmented reality (AR), virtual reality (VR), telesurgery, and robotics.[219]

62. Accordingly, we propose to repurpose some or all of the 12.7 GHz band for mobile broadband and other expanded use and seek comment on this proposal. We seek comment on the economic benefits of introducing mobile broadband or other expanded use in all or part of the 12.7 GHz band. Commenters should consider the economic value of current and future use cases for each type of use, including benefits and opportunity costs to consumers and the Nation's economy overall, as well as to unserved or underserved areas and specialized market segments (e.g., education, telemedicine, and manufacturing). Commenters should also address the benefits of international harmonization both in terms of devices and network deployments. In addition, we encourage commenters to consider the economic impact on consumers and businesses in rural communities and areas that are unserved or underserved by current broadband providers, as well as any economic impact on small businesses.

63. The propagation characteristics of this frequency range will require operators to transmit at relatively high power to achieve meaningful coverage and capacity.[220] Parties that support mobile broadband use of the band argue that sharing regimes premised upon relatively low power operations

[214] *See 12.7 NOI* at *12-*14, paras. 34 (describing incumbent services in 12.2-12.7 GHz band), 35-38 (describing incumbent Federal services in 13.25-13.4 GHz and 13.4-13.75 GHz bands), 39-40 (recognizing the need for services in these adjacent bands to continue providing service and seeking comment on whether provisions beyond the existing 12.7 GHz band fixed service protection levels for adjacent bands would be necessary for mobile broadband or other expanded-use operations in the 12.7 GHz band to prevent harmful interference to operations in those adjacent bands).

[215] *See 12.7 NOI* at *5, para. 12.

[216] *See, e.g.*, AT&T Comments at 4; Competitive Carriers Association Reply at 4 (CCA); CTIA Comments at 5; DISH Network Corp. Comments at 5 (DISH); Ericsson Comments at 10; Nokia Comments at 3; Qualcomm Comments at 7; T-Mobile USA, Inc. Comments at 3; U.S. Cellular Corp. Reply at 2 (UScellular); Verizon Comments at 1; 5G Americas Reply at 5; 5G for 12 GHz Coalition Comments at 3. *But see* EIBASS Comments at 1; Ovzon Comments at 1. Several commercial wireless interests note that more lower mid-band spectrum is needed and that the 12.7 GHz band should be viewed as a complement to lower mid-band spectrum—not a replacement. *See* AT&T Comments at 1; Ericsson Comments at 9; T-Mobile Comments at 14; 5G Americas Reply at 6.

[217] *See* Ericsson Comments at 5; Qualcomm Comments at 3, 7. Qualcomm notes that next generation technology advancements such as active Antenna Systems (AAS) and Giga-MIMO will compensate for attenuation in such high frequency bands. Qualcomm Comments at 5; *see also* Nokia Comments at 2-3.

[218] Ericsson Comments at 6, 8.

[219] Consumer Technology Association Comments at 2 (CTA).

[220] CTIA Comments at 9; Rural Wireless Association, Inc. Comments at 2-3 (RWA); Verizon Comments at 9; T-Mobile Reply at 4.

would not provide the coverage needed to make investment worthwhile.[221] Nokia argues that fixed paths—both BAS/CARS, Fixed Microwave Services and Common Carrier and Operational Fixed Services (OFS)—are concentrated in major cities along the coasts and that allowing these operations to remain in the band would discourage investment in mobile broadband expansion in areas that would most benefit from it.[222] Similar to fixed point-to-point links, current mobile use of the band is limited to BAS/CARS television pickup services generally licensed to operate "over an area defined by a point-radius or other wide-area basis," including large, densely-populated areas with higher spectrum-use demands.[223] Accordingly, parties favoring mobile deployment in the band opposed sharing with these incumbent systems.[224] Some note that sharing should be used in situations where clearing the band is not possible, which is not the case in the 12.7 GHz band, where coordination, repacking and relocation are available.[225]

64. The record, as well as the Commission's experience with other bands, reflects that this proposed repurposing will enable next-generation mobile and fixed broadband services in the 12.7 GHz band. AT&T, T-Mobile, Verizon, Federated Wireless, Nokia, CTIA, Celona, 5G for 12 GHz Coalition, 5G Americas, Dynamic Spectrum Alliance, CCA, and DISH, all support bringing terrestrial mobile wireless services into the 12.7 GHz band.[226] Based on the Commission's well established success in repurposing other bands for new services, such as PCS and AWS, using exclusively assigned geographic-area licenses,[227] we agree with commenters that assigning exclusive licenses is most likely to foster the innovation necessary for an equipment ecosystem to develop in the band and best facilitate the relocation and repacking of incumbents, which in turn will accelerate deployment of mobile broadband and other expanded services in the band.[228] We seek comment on these proposals. We also discuss below and seek comment on whether limited sharing in the band among different types of services is possible.

65. The National Association of Broadcasters and the Society of Broadcast Engineers assert the 12.7 GHz band is generally not favored by BAS for long-distance high reliability links; however, both assert it is necessary for short distance links when no other frequencies are available due to congestion of

[221] Ericsson states that sharing methods based on dynamic sharing are not likely to optimize usage of the spectrum, and instead "will result in lower power levels, uncertainty regarding access to the band, and limited investment and utility." Ericsson Comments at 10. 5G Americas also argues that the Commission should relocate incumbents instead of creating a low-power sharing regime. 5G Americas Comments at 4-5.

[222] Nokia Comments at 4.

[223] Nokia Comments at 5.

[224] *See, e.g.*, Nokia Comments at 4-5.

[225] T-Mobile Reply Comments at 6-7; Verizon Comments at 5-6.

[226] *See* AT&T Comments at 3-4; CTA Comments at 2; CTIA Comments at 1, 6; DISH Comments at 1; Dynamic Spectrum Alliance Comments at 1-2 (DSA); Ericsson Comments at 1, 8; Federated Wireless Comments at 1; NCTA Comments at 1; Nokia Comments at 2-3; OneWeb Comments at 1; Qualcomm Inc. Comments at 6 (Qualcomm); T-Mobile Comments at 1; Verizon Comments at 1; 5G for 12 GHz Coalition Comments at 2-3; CCA Reply at 2; Celona Reply at 2-3; US Cellular Reply at 2; 5G Americas Reply at 4-5.

[227] *See e.g.*, *infra* note 251 and accompanying text; *accord Spectrum Frontiers 1st R&O and FNPRM*, 31 FCC Rcd at 8027-28, paras. 29-30, 8045-46, paras. 78-79.

[228] Indeed, the majority of the interests that advocate for expanded fixed or mobile uses argue against sharing in the band and for repacking or relocation of incumbents. *See, e.g.,* CTIA Comments at 1,7; Ericsson Comments at 11; Nokia Comments at 4-6; Qualcomm Comments at 7; T-Mobile Comments at 10-12. 5G Americas states that "the Commission should relocate incumbents to the greatest extent possible rather than apply a low-power sharing regime" and that "[r]elocation expenses should be reimbursed from the pool of auctions proceeds for relocation pursuant to a concrete deadline and should be shared by all new 12.7 GHz entrants, on a *pro rata* share." *See* 5G Americas Reply Comments at 6-7.

the 2 GHz and 6 GHz bands.[229] Accordingly, although broadcaster commenters oppose relocation of mobile BAS to other frequency bands, repacking to a discrete portion of the 12.7 GHz band remains not only possible, but a favorable outcome according to broadcasters, provided they are reimbursed and are adequately protected.[230] We therefore propose to repack mobile BAS/CARS incumbents to a portion of the 12.7 GHz band.

66. We acknowledge that some satellite industry commenters do not support opening the 12.7 GHz band to terrestrial mobile use and would instead prefer rule changes to intensify satellite use of the band in the United States.[231] Other satellite companies, however, support examining whether the band can be opened to mobile or other expanded terrestrial use, but they also note their concern that the Commission take steps to ensure that services in adjacent bands are not impacted by out-of-band emissions below 12.7 GHz.[232] Furthermore, as T-Mobile notes, satellite operators themselves recognize that there has been limited use of the 12.7 GHz band in the U.S. for satellite operations, which makes use of the band for mobile wireless operations feasible.[233] As noted by Nokia, "of the total number of GSO satellites, only eight of the 23 space stations are in the arc of 132.85 WL to 30 WL," and "[r]egarding non-GSO satellites, the one operational system does not have any U.S. earth stations licensed in this band, another system is not operational, and a third has surrendered the Ku-band portion of the grant."[234] Therefore, according to Nokia, "the sharing of the band with satellite service mostly refers to sharing with GSO FSS in the uplink direction (Earth-to-space)," and "[w]hile more detailed analysis taking into account the characteristics of both systems would be more conclusive, it is expected that the mobile broadband service can share the band with [existing] GSO FSS uplink with no restrictive conditions."[235] We seek comment on our proposal that satellite systems in the band be conserved in their current state with no further expansion in FSS use in the band.[236] We also seek comment on the best method for mobile and fixed systems to share with these remaining satellite systems, while ensuring against harmful interference to such satellite incumbents.

2. Future Licensing of Incumbent Services

67. Effective September 19, 2022, the International, Public Safety and Homeland Security, Media, and Wireless Telecommunications Bureaus announced a 180-day freeze on the filing of new or

[229] National Association of Broadcasters Comments at 3 (NAB); Society of Broadcast Engineers Comments at 2-3 (SBE).

[230] NAB Comments at 2; NAB Reply at 4.

[231] Eutelsat Comments at 2-3, 5-6; Intelsat/SES May 12, 2023 Ex Parte at 2, B-1 (noting that FSS ability to operate in 12.7 GHz band is constrained by footnote NG52 of the U.S. Table of Frequency Allocations limiting use of the band to international systems); Intelsat License LLC and SES Americom, Inc. Comments at 2; Hispasat Reply at 3-4 (arguing that relocating incumbent FSS services out of the 12.7 GHz band, as suggested by certain commenters, is not a viable option because satellite operators have made significant long-term investments, considering the 15–20-year lifespan of a GSO satellite, in reliance on existing frequency allocations).

[232] Kepler Communications Inc. Comments at 2-3 (Kepler); Space Exploration Holdings, LLC Comments at 3 (SpaceX); WorldVu Satellites Limited Comments at 4 (OneWeb).

[233] *See* T-Mobile Reply at 9 (citing Eutelsat Comments at 6, OneWeb Comments at 2-3). T-Mobile adds that given the restriction on satellite use of the 12.7 GHz band due to NG52 which restricts the majority of the 12.7 GHz band in the U.S. to international systems, it would be unreasonable for satellite operators to claim a reliance interest in expanded use of the band for satellite operations. T-Mobile Reply at 9.

[234] Nokia Comments at 6 citing *12.7 NOI* at para. 11.

[235] Nokia Comments at 6.

[236] Our proposal would not preclude the possibility of a new U.S.-licensed satellite that would have no visibility into the United States, as defined in the Communications Act, i.e., states, territories, and possessions. 47 U.S.C. § 153.

modification applications for licenses or other authorizations in the 12.7 GHz band.[237] The purpose of this temporary freeze was to preserve the current landscape of authorized operations in the 12.7 GHz band pending the Commission's consideration of actions in this proceeding.[238] In light of the *12.7 NOI*, the Commission extended the freeze pending the outcome of GN Docket No. 22-352.[239] Because we propose to transition most of the band to exclusively assigned geographic-area licenses for mobile broadband and other expanded uses, we propose to revise the Commission's rules to, in essence, make the freeze permanent. Accordingly, we propose rule revisions to dismiss any new space station license applications and new requests for access to the U.S. market through non-U.S.-licensed space stations, or those parts of any such applications and requests, that seek to operate in the 12.7 GHz band. This would not apply to new applications for space stations limited to serving earth stations outside the United States, applications for modification of existing space station authorizations,[240] relocations of existing space stations pursuant to the Commission's fleet management policy,[241] or to applications for replacement space stations.[242] We propose rule revisions to dismiss applications, or those portions of applications, received for new earth station licenses, and modifications to earth stations currently authorized, to operate in the 12.7 GHz band. This would not apply to applications for renewal or cancellation of current earth station authorizations,[243] or modifications to correct location or other data required in the earth station file.[244] We also propose rule revisions to dismiss applications received for new or major modifications to fixed microwave, fixed or mobile BAS and CARS stations to operate in the 12.7 GHz band. This change does not extend to applications for renewal, cancellation or applications to modify incumbent mobile BAS/CARS licenses to the mobile BAS/CARS repack band. We seek comment on these proposals.

3. Transition of Incumbent Operations

68. In the *12.7 NOI*, we inquired whether any incumbent services in this band should be sunset,[245] with existing operations relocated from all or part of the band and whether new exclusive, geographic-area-licenses should be required to protect or relocate incumbent operations before the sunset date.[246] We inquired whether the Emerging Technologies (ET) framework could be applied to relocation of incumbents from this band and whether the relocation procedures need to differ for one or more incumbent uses.[247] While we propose that FSS incumbents would not be subject to relocation or sunset,

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[237] *180-Day Freeze on Applications for New or Modified Authorizations for the 12.7-13.25 GHz Band*, Public Notice, DA 22-974, 2022 WL 4358635, at *1 (IB/PSHSB/MB/WTB Sept. 19, 2022).

[238] *Id*. The Bureaus noted that the Commission or the Bureaus might extend the freeze if doing so is deemed necessary to avoid undermining the purpose of the freeze. *Id*.

[239] *See 12.7 Freeze Extension Order*, FCC 22-80, at para. 44 (Commission extended freeze pending the outcome of GN Docket No. 22-352).

[240] 47 CFR § 25.117.

[241] 47 CFR § 25.118(e) (permitting the relocation of a GSO space station without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets specific requirements, including a requirement that the space station will be relocated to a position within ±0.15° of an orbital location assigned to the same licensee).

[242] 47 CFR §§ 25.158(a)(2), 25.165(e)(1), (2).

[243] 47 CFR § 25.121(e).

[244] *See generally International Bureau Addresses Accuracy of Earth Station Location Information in IBFS*, Public Notice, 32 FCC Rcd 9512 (IB 2017); 47 CFR § 25.117.

[245] The sunset is the date by which all incumbent operations cease to be protected from interference by new entrants. *See, e.g.,* 47 CFR §§ 27.1253(a), 101.79(a).

[246] *12.7 NOI* at *9-*10, paras. 25-26.

[247] *12.7 NOI* at *10, para. 26; *see, e.g.*, Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including (continued)

we propose to apply our ET procedures to relocate or repack incumbent terrestrial licensees to introduce new services into a frequency band populated by incumbent licensees. ET procedures represent a broad set of tools that the Commission uses, revises, and updates to aid the process of making spectrum available for new uses. Pursuant to these procedures, the Commission will set a "sunset date" for the terrestrial incumbents in this band—a date after which these licensees may not cause harmful interference to new band entrants.[248] Prior to the sunset date, the new entrants may not cause harmful interference to terrestrial incumbents but will be allowed to enter into mandatory negotiations with these incumbents to gain early entry into the band and, if necessary, may relocate these terrestrial incumbents to comparable facilities.[249] Because new entrants may have to relocate some of these incumbents from a larger frequency range or greater geographic area than where the new entrants will operate, the Commission may establishes a companion set of cost-sharing procedures.[250] We seek comment on these proposals and

(Continued from previous page)
Third Generation Wireless Systems, ET Docket No. 00-258, Ninth Report and Order and Order, 21 FCC Rcd 4473, 4484, para. 19 (2006) (requiring new entrants to relocate incumbents system-by-system rather than link-by-link due to the unique operations of incumbents' systems); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* GN Docket No. 18122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2416, para. 182 (2020) (*3.7 GHz Band Report and Order*). Some transitions were based on rules that called for negotiations when an ET licensee proposed to operate a base station before the sunset date that would interfere with an incumbent's operation. *See, e.g.*, 47 CFR §§ 101.69-101.81. Other transitions had relatively short sunset dates. *See, e.g.,* 47 CFR §§ 101.83-101.97. In the Broadcast Incentive Auction Transition and for the 3.7-4.2 GHz (3.7 GHz band) Transition, the Commission established cost catalogs for relocation expenses. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, 29 FCC Rcd 6567, 6820, para. 619 (2014) (delegating authority to the Media Bureau "to . . . develop a final Catalog of Eligible Expenses, and make other determinations regarding eligible costs and the reimbursement process."); *see also Wireless Telecommunications Bureau Seeks Comment on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, Public Notice, 35 FCC Rcd 4440 (WTB May 2020). The D.C. Circuit has upheld the Commission's authority to require new entrants to relocate incumbent systems to comparable facilities. *See, e.g.*, *Teledesic LLC v. FCC,* 275 F.3d 75, 84-87 (D.C. Cir. 2001); *see also Ass'n of Public-Safety Commc'ns Officials-Int'l, Inc. v. FCC*, 76 F.3d 395, 400 (D.C. Cir. 1996) (upholding elimination of an exemption for public safety incumbents from a relocation regime in which new licensees would pay all costs associated with relocating incumbents to comparable facilities).

[248] The sunset is the date by which all incumbent operations cease to be protected from interference by new entrants. *See, e.g.*, 47 CFR §§ 27.1253(a), 101.79(a). *See infra* App. A, § 27.1712. Regarding protection of incumbent microwave systems prior to sunset and the trigger for relocation, we seek comment on whether the references in § 24.237(a) to TIA Telecommunications Systems Bulletin 10–F, "Interference Criteria for Microwave Systems," May 1994, (TSB10–F), and Appendix I of Subpart E of Part 24 – A Procedure for Calculating PCS Signal Levels at Microwave Receivers), and § 24.237(d) Table 3 (Coordination Distance in Kilometers) need to be updated or adjusted to account for use in the 12.7 GHz band.

[249] *See, e.g., Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Band Report and Order*), *aff'd PSSI Global Services v. FCC*, 983 F.3d 1 (D.C. Cir. 2020) (permitting accelerated relocation of incumbent FSS space and earth stations by new wireless entrants); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 00-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) (relocation of BAS, CARS, and LTTS incumbents by new, nationwide wireless entrant); *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 (1992) (relocation of FS incumbents by new wireless entrants). The D.C. Circuit has upheld the Commission's authority to require new entrants to relocate incumbent systems to comparable facilities. *See, e.g., Teledesic LLC v. FCC*, 275 F.3d 75, 84-87 (D.C. Cir. 2001); *see also Ass'n of Public Safety Communications Officials-Int'l, Inc. v. FCC*, 76 F.3d 395, 400 (D.C. Cir. 1996) (upholding elimination of an exemption for public safety incumbents from a relocation regime in which new licensees would pay all costs associated with relocating incumbents to comparable facilities).

[250] *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, Notice of Proposed Rule Making, 11 FCC Rcd 1923 (1995).

ask commenters addressing them to outline how they would apply the ET framework to this band as discussed further below for each type of terrestrial incumbent.

a. Fixed Service

69. Based on our goal of making the 12.7 GHz band available for advanced communications services, and supported by the record, we propose to revise the Commission's rules to make all incumbent point-to-point operations in the band under parts 74, 78, and 101 secondary to new mobile broadband/expanded use operations on a date certain. We seek comment on whether this sunset date should be three, five, or ten years after the first license for such new operations is issued in the band. Should the sunset date differ based on the incumbent service? Fixed microwave incumbents have a long and successful history of relocation, including clearing the 1850-1990 MHz band for Personal Communications Service (PCS) and the 2110-2200 MHz bands for Advanced Wireless Services (AWS) bands.[251] CTIA argues that most incumbent services currently operating in the 12.7 GHz band can be relocated to different media or spectrum bands without any loss of functionality.[252] For example, CTIA estimates that nearly 80 percent of the BAS licenses in the 12.7 GHz band are for fixed links that could be moved either to different fixed microwave service bands or to alternative media such as fiber.[253]

70. Verizon notes that the 12.7 GHz band "is home to approximately 1,697 Broadcast Auxiliary Service (BAS) call signs, 15 Cable Television Relay Service (CARS) licenses, and 224 call signs for part 101 licensed point-to-point microwave links."[254] Verizon contends that "[s]uch technologies, which support public service and public safety among other functions, could be relocated (and upgraded) consistent with the Commission's longstanding *Emerging Technologies* principles.[255] Nokia believes that we should relocate the limited number of fixed links operating in the 12.7 GHz band.[256] Ericsson states that the Commission, "[w]here possible, … should explore opportunities to relocate incumbents" from the 12.7 GHz band or, in certain instances, consolidate, segment, and repack certain incumbent users into a smaller portion of the band.[257] 5G Americas supports the relocation of incumbents from the 12.7 GHz band "to the greatest extent possible."[258]

71. The record reflects a strong consensus among parties that we utilize our Emerging Technologies policies to transition and sunset all incumbent point-to-point licenses in the band under

[251] *See* CTIA Comments at 7-8 & nn. 20,21 (citing *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700 (1993); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Second Report and Order*, 17 FCC Rcd 23193 (2002); *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-220 MHz Band*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16214, para. 304 (2012)).

[252] CTIA Comments at 7.

[253] CTIA Comments at 8.

[254] Verizon Comments at 6-7.

[255] Verizon Comments at 7.

[256] Nokia Comments at 4. Nokia notes that "[w]hile the nationwide number of fixed point-to-point links is limited, BAS fixed links (1,172 fixed paths) are concentrated in major cities along the coasts" and "[o]ther licensed fixed service links, such as Common Carrier and Operational Fixed Services (OFS) are concentrated in the West Coast cities and states." *Id.* Nokia recommends that the Commission relocate such services to other fixed microwave bands. *Id.*

[257] Ericsson Comments 11.

[258] 5G Americas Reply Comments 5.

parts 74, 78, and 101.[259] We agree that doing so will appropriately balance the operational needs of incumbents with the public interest benefits of expanded use of the spectrum. The transition of fixed links is relatively straightforward and entails the relocation of independent fixed point-to-point microwave links which can proceed link-by-link basis consistent with our Emerging Technology policies. We therefore propose to apply sections 101.69, 101.73, and 101.75 and amend sections 74.690 and 78.40 to govern relocation of incumbent fixed services from this band.[260] We further propose that, three, five, or ten years after the first mobile broadband/expanded use license is issued in the band, incumbent point-to-point licenses in the band would become secondary (operate on an unprotected, non-interference basis) to new licensed operations. We seek comment on this proposal including the appropriate sunset period for point-to-point licenses.

b. Mobile BAS/CARS

72. We seek comment on our proposal to repack incumbent mobile BAS/CARS licensees into a portion of the 12.7 GHz band to be designated for mobile BAS/CARS operations. The 12.7 GHz band has approximately 450 BAS and CARS call signs that authorize land mobile television pickup stations. These are effectively mobile news gathering technologies that operate over an area defined by a point-radius or other wide-area basis, making them the most likely to potentially interfere with or receive interference from any new mobile broadband co-channel entrants. While these land mobile pickup transmitter licensees coordinate with each other and share the spectrum among multiple licensees in any given area,[261] coordination among these incumbents and new mobile broadband or other expanded use operations is infeasible given that the former need to operate temporary fixed links or mobile transmitters anywhere in their market, often on short notice, and that the latter will be ubiquitous. For this reason, the Commission asked in the *12.7 NOI* if mobile BAS/CARS operations could be relocated to a portion of the band or else to a different band or technology.[262]

73. Given the varied and widespread nature of mobile BAS (403 call signs) and mobile CARS (50 call signs) operations, Verizon encourages the Commission to propose relocating these operations from the band.[263] Nokia also urges relocation of mobile BAS/CARS operations because transmitters in the television pickup service are often licensed to operate over an area defined by a point-radius or other wide-area basis and across the entire frequency band, with large operating areas that include major cities.[264]

74. Significantly, NAB and Scripps Broadcasting recognize that it may be possible to repack broadcaster operations in the 12.7 GHz band into a smaller segment of the band, assuming the Commission adopts rules that will fully protect those broadcaster operations from harmful interference

[259] *See, e.g.,* AT&T Comments at 4; CTIA Comments at 6-7; Nokia Comments at 3-5; T-Mobile Comments at 3-4; Competitive Carriers Association Reply Comments at 3; 5G Americas Reply Comments at 6-7. *But see* Celona Inc. Comments at 1-2 (noting that "Celona does not advocate sunsetting or relocating incumbent users, but instead supports coexisting with the incumbents through a DSMS model.").

[260] *See infra* App. A*,* 47 CFR §§ 74.690, 78.40, 101.69, 101.173, 101.75.

[261] *See infra* App. A, 47 CFR pt. 74 (§§ 74.600-74.690), pt. 78 (§§ 78.1-78.115).

[262] *12.7 NOI* at *14, para. 28. Ericson recognizes that mobile TV operations "could make sharing the 12.7 GHz band with new terrestrial mobile broadband services more challenging" and that "[o]pportunities to relocate incumbents or consolidate and segment the band should be prioritized," such as "repack[ing] certain existing uses into a smaller portion of the band." Ericsson Comments at 10-11.

[263] Verizon Comments at 7.

[264] Nokia Comments at 5. Nokia contends that "mechanisms to enable coexistence with mobile incumbents are usually more complex than in case of fixed incumbents." *Id.* It also notes that "[r]estrictions on the mobile broadband deployments in such areas to allow sharing with mobile incumbents would decrease the value of the band." *Id.* at 4.

caused by new entrants and ensure that broadcaster do not bear any costs associated with relocation.[265] SBE cautions that the relocation of mobile BAS and other incumbent broadcast operations would be impractical and expensive, because (1) there is no "clear alternative offering the flexibility necessary for mobile ENG and other broadcaster operations; and (2) "even if there were a clear alternative … relocation would "render broadcasters' incumbent mobile newsgathering equipment obsolete—resulting in significant costs to replace and deploy new equipment (for use in other spectrum or within a newly reserved portion of existing spectrum), and for which broadcasters' expenses would need to be compensated."[266] As CTIA observes, in 2000 the Commission adopted rules to repack mostly mobile BAS/CARS operations, similar to those in the 12.7 GHz band, from the 1990-2110 MHz band to the 2025-2110 MHz band using more spectrally efficient equipment.[264]

75. We propose to repack mobile BAS/CARS incumbents into a segment of the 12.7 GHz band to be designated for mobile BAS/CARS use, and we seek comment on this proposal. We propose to retain 25 megahertz for mobile BAS/CARS operation and to repack existing operations into this dedicated band. Is 25 megahertz adequate to accommodate current mobile BAS/CARS incumbent operations in the 12.7 GHz band? If no, how much spectrum would be required for mobile BAS/CARS use after repacking? Where within the 12.7 GHz band should these repacked operations be located? Would locating the repack band at the top, bottom, or both ends of the 12.7 GHz band more effectively serve to mitigate potential interference, from new 12.7 GHz band mobile broadband or other expanded use operations, to operations in adjacent bands? Are the existing provisions that reserved 13.15-13.2125 GHz for mobile BAS/CARS inside a 50 km radius of 100 television markets relevant to this question?[267] Commenters should discuss advantages and disadvantages of different repacking options, included economic considerations.

76. We seek comment on the typical use of this band by mobile BAS/CARS incumbent licensees. For example, is this band typically used by BAS licensees for traditional ENG type operations from a mobile pickup van or truck back to the studio or central receiver site? Or is this band used primarily for shorter more localized transmission from cameras or backpack transmitters to the ENG truck? Are there other typical uses for mobile transmitters in this band? Is equipment in this band tunable within the band? Is equipment in this band capable of scaling bandwidth to different sized channels? How intensively is this band used in practice by incumbent licensees for mobile operations compared to other BAS bands such as 2 GHz and 6 GHz? Is equipment currently being manufactured and marketed for mobile BAS/CARS operation in this band? Can new 12.7 GHz band equipment used for studio-transmitter links be reconfigured for ENG or other mobile BAS/CARS uses?

77. We seek comment on how our Emerging Technologies procedures should apply to incumbent use of non-fixed or mobile operations in the band. Whereas the transition of fixed links is relatively straightforward, in that it entails the relocation of independent fixed point-to-point microwave links, and can proceed link-by-link on an as-needed basis, the integrated nature of mobile BAS and CARS operations makes link-by-link relocation infeasible. It is further complicated by incumbent use of

[265] NAB Comments at 2, 7-8; Scripps Broadcasting Comments at 1, 5. NAB emphasizes that, any relocation of broadcasters' operations must be fully funded. NAB Reply Comments at 5; *see also* Scripps Broadcasting Comments at 5. Broadcasters have made significant investments in 12.7 GHz operations, and the costs of relocation may be substantial. NAB Reply at 5. Even frequency changes within the 12.7 GHz band may require antenna replacements that are costly or impractical. *Id.*; *see also* Scripps Broadcasting Reply at 5.

[266] SBE Comments at 4-5.

[267] *See* 47 CFR §§ 2.106 note NG 53, 74.602(a) note 2; 78.18(l). *See also Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees*, Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 26 FCC Rcd 11614, 11626 para. 24 (2011) (Commission excluded FS from 13.150-13.200 MHz nationwide because that spectrum was already reserved for TV pickup operations in 100 markets).

frequency-agile, non-fixed or mobile stations.[268] The Commission has previously required that the BAS and CARS operations be cleared from transitioning bands on a market-by-market basis before any new entrant could begin operations.[269] It may also be necessary for a new entrant to relocate more non-fixed or mobile BAS and CARS facilities than an interference analysis might indicate is technically necessary in order to meet the comparable facility requirement for relocating non-fixed or mobile BAS or CARS operations.[270] Should a new entrant therefore be obligated to relocate all incumbent non-fixed or mobile BAS and CARS operations in all affected BAS and CARS markets, including those markets where the new entrant provides partial, minimal, or even no service? We seek comment on our proposals.

78. Once incumbent mobile BAS/CARS have transitioned into a repacked band, should we consider whether to allow the following to operate in some or all of the mobile BAS/CARS repack band: incumbent fixed point-to-point (PTP) BAS, or all incumbent fixed PTP (some of which may have tunable equipment) so long as such fixed PTP links would not intersect with incumbent mobile BAS/CARS authorized mobile operating areas, and new mobile BAS/CARS operations?[271] If the repack band is reserved nationwide for mobile BAS/CARS (limited to incumbents during a transition period) are there any scenarios in which we should consider permitting licensed expanded-use services to operate in portions of the repack band (spectral or geographical) after the transition period? Could an automated spectrum management system at a later design date be needed in the mobile BAS/CARS repack band, or could shared access occur without the use of database managed sharing systems?[272] We seek comments on these issues.

c. Fixed Satellite Service

79. *Space stations.* As noted in our *12.7 NOI*, 27 space stations' records specify use of the 12.7 GHz band with all 27 specifying downlink (space-to-Earth) in the 12.7-12.75 GHz band, 20 specifying uplink (Earth-to-space) in all or a segment of the 12.75-13.25 GHz band, and four specifying uplink (Earth-to-space) in the 12.7-12.75 GHz band and in all or a segment of the 12.75-13.25 GHz band.[273] More generally, of the total number of GSO satellites, we noted in the *12.7 NOI* that only eight of the 23 space stations are in orbital locations with good visibility to all or significant portions of CONUS.[274] Of the four satellite records associated with three non-geostationary orbit (NGSO) systems, we noted that the one operational system does not have any U.S. earth stations licensed in this band,

[268] Further, while BAS and CARS mobile operations are licensed for specific geographic markets, in some cases they operate nationwide.

[269] *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service*, ET Docket No. 95-18, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd 23638, 23653-23660 paras. 29-42 (2003); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, Sixth Report and Order, Third Memorandum Opinion and Order and Fifth Memorandum Opinion and Order, 19 FCC Rcd 20720, 20746-20753 paras. 57-73 (2004) (*AWS Sixth Report and Order*); 47 CFR §§ 74.690(e)(1), 78.40(f)(1).

[270] *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, 19285 para. 52 (2006); 47 CFR §§ 74.690(d), 78.40(d)-(e). For example, operations of non-fixed or mobile BAS or CARS operations in an adjacent market may need to be relocated even though the new entrant does not initiate operations in that adjacent market.

[271] *See* 47 CFR § 101.147(a) n.34.

[272] 47 CFR §§ 96.53-96.66 (Spectrum Access System for the Citizens Broadband Radio Service); *id.* §§ 15.713-15.715 (White space database); *id.* § 15.407(k) (Automated Frequency Coordination (AFC) system for 6 GHz devices). No AFC system operators have yet been designated by the Commission.

[273] *12.7 NOI* at *5, para. 11.

[274] *Id.* (Commission noted that these eight space stations are in the arc of 132.85 WL to 30 WL.)

another system is not operational, and a third has surrendered the Ku-band portion of the grant.[275] We are not proposing to sunset or to require new entrants to relocate Fixed Satellite Service incumbents, which we propose to define as any Fixed Satellite Service space station or earth station authorized to serve or operate in the United States in accordance with the Table of Allocations based on an application or petition for market access filed before September 19, 2022.

80. Verizon states, however, that "the Commission's recent action to open the band to new [NGSO] satellites has substantially changed the spectral landscape, despite the goal of the freeze on processing of new applications in this frequency range."[276] According to Verizon, "the Commission should seek further comment on how new wireless operations can coexist with the substantial number of new NGSO FSS deployments."[277] In addition, Verizon states that "[t]o the extent FSS operations are not relocated from the band, the Commission should seek comment on how it might leverage the prior-coordination requirements for terrestrial and space services to facilitate coexistence among operations in the band."[278] We seek comment accordingly. We note, however, that SpaceX supports the Commission's decision to explore use of the 12.7 GHz band rather than the 12.2 GHz band for terrestrial mobile broadband and other expanded use. SpaceX asserts that "[w]hile [it] is licensed for both bands, it nonetheless joins the other commenters supporting the Commission's shift in focus to the upper 12 GHz band."[279] In any event, SpaceX's "[o]perations of [NGSO] systems in the 12.75-13.25 GHz (Earth-to-space) frequency band with earth stations in the United States are restricted to individually licensed earth stations in accordance with footnote NG57 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106, NG57."[280] Additionally, SpaceX's "authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future.[281]

81. *Earth stations*. As noted in the *12.7 NOI*, 27 locations are associated with 43 incumbent earth stations.[282] There are eight earth station authorizations for ESIM or temporary fixed operations that do not specify a specific set of geographic coordinates.[283] Of the 35 remaining earth stations, there are

[275] *Id.*

[276] Verizon Comments at 8 & n.26 (citing *SpaceX Gen2 Order*, FCC 22-91, 2022 WL 17413767, at *1 para. 1, *18, para. 42 (authorizing the construction, deployment, and authorization of up to 7,500 satellites (Earth-to-space) in the 12.75-13.25 GHz band, among other segments)).

[277] *Id.*

[278] *See* Verizon Comments at 7-8.

[279] SpaceX Reply at 1. *See also* Letter from Kimberly M. Baum, Vice President, Spectrum Engineering & Strategy, WorldVu Satellites Limited, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352 *et al*. at 2 (filed Mar. 20, 2023) (OneWeb March 20, 2023 *Ex Parte*) ("OneWeb urged closing out the 12.2-12.7 GHz proceeding and shifting the Commission's focus to the 12.7-13.25 GHz band which holds more promise for expanded terrestrial use.").

[280] *SpaceX Gen2 Order,* FCC 22-91 at para. 135(h) (noting that the licensing of earth stations (i.e. filed after Sept. 19, 2022) for operations in the 12.75-13.25 GHz will be subject to filing freeze on applications for new or modified authorizations for the 12.7-13.25 GHz band.).

[281] *SpaceX Gen2 Order*, FCC 22-91 at para. 135(hh) (stating that the "authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. [And, that]…any investments made toward operations in the bands authorized [by the] Order by SpaceX in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of any future Commission actions…[including, but not limited to]…any conditions or requirements resulting from any action in the proceedings associated with…GN Docket 22-352…").

[282] *See 12.7 NOI* at *5, para. 11.

[283] *Id.* An ESIM is operated by remote control from a ground-based network and monitoring center that is specified in the authorization. *See* 47 CFR § 25.271. "Of the 20 earth station authorizations for uplink [sic] (space-to-Earth) in the 12.7-12.75 GHz band, eight are for Earth Stations in Motion (ESIMs) and may or may not involve operations (continued)

eight instances of co-location with other earth stations, resulting in the 27 locations.[284] A majority (23) of those Earth stations are authorized for uplink transmission (Earth-to-space) in the 12.7 GHz band.[285] Additionally, 20 earth stations are authorized for downlink reception (space-to-Earth) in the lower 50 megahertz of the band (i.e., 12.7-12.75 GHz), in many instances together with other frequencies in the lower-adjacent Ku-band.[286] We also noted that, for FSS operations, downlink earth stations are more likely to suffer harmful interference from terrestrial systems than uplink earth stations (where the victim receiver is at the space station far from the terrestrial systems).[287]

82. We propose to grandfather the 23 incumbent earth stations in the 12.75-13.25 GHz band that operate in accordance with the United States and ITU's band allocation for Region 2 by operating earth-to-space. No additional earth stations would be authorized in the 12.7 GHz band. We propose that non-conforming incumbent Earth stations that operate by receiving in the space-to-Earth direction in 12.7-12.75 GHz in the United States may continue on a non-interference basis and have no right to protection from harmful interference.[288] We seek comment on potential international implications of our proposal.

d. Incumbent Status—Licensing Data

83. We propose to define incumbent operations entitled to protection or relocation (until the sunset date), or for grandfathered status, based on the facilities authorized in the Commission licensing records.[289] In the Order section of today's item, we direct fixed and mobile BAS and CARS licensees under parts 74 and 78, for each of their authorizations to use the 12.7 GHz band, to certify the accuracy of all information reflected on each license, including whether the facilities are operating as authorized. If a licensee is unable to make such a certification for a given license, it must cancel or modify the license in accordance with the Commission's rules. For BAS and CARS licenses, we propose to limit eligibility for incumbent status in the 12.7 GHz band to those licenses for which the licensee has timely filed the certification required in this *Order* in ULS or COALS, respectively.

84. Although we do not require other incumbents to provide additional information on their existing operations at this time, in the Order we direct the Bureaus, in coordination with the Office of Economics and Analytics, to consider whether additional information should be collected from some or all 12.7 GHz band incumbents. In the event that additional information is required from incumbents, we propose to limit eligibility for incumbent status to those incumbents that file such required certifications or data. Because the Commission proposed to use these licensing data to inform our deliberations regarding the future use of the 12.7 GHz band, including possible interference avoidance coordination or relocation of facilities, or grandfathered status that could require future licensees to accept harmful

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in these frequencies in the United States." *12.7 NOI* at n.28 (the 20 earth stations, and therefore the eight indicated for ESIM have a "downlink" designation.).

[284] *See 12.7 NOI* at *5, para. 11. In addition, the Department of Defense (DoD) leases commercial satellite services in the 12.7-13.25 GHz band as end users. *Id.*

[285] *See 12.7 NOI* at *5, para. 11.

[286] *See 12.7 NOI* at *5, para. 11.

[287] *12.7 NOI* at *10, para. 28.

[288] *See Application of Fugro-Chance, Inc.*, Order and Authorization, 10 FCC Rcd 2860, 2860, para. 2 (IB 1995) (stating that a waiver of section 2.106—the U.S. Table of Frequency Allocations—is appropriate "when there is little potential for interference into any service authorized under the Table of Frequency Allocations and when the non-conforming operator accepts any interference from authorized services").

[289] Licensing data for fixed and mobile BAS under part 74 and Fixed Microwave under part 101 is in ULS. Licensing data for fixed and mobile CARS is in COALS. Licensing data for FSS stations is in MyIBFS.

interference from existing operations, we encourage all licensees to timely submit their data and to update their information in the event of a change in any of the operational parameters.

e. Cost-sharing

85. When the Commission adopts a transition plan that involves the relocation of incumbents, new entrants sometimes have to relocate an incumbent from a larger frequency range or greater geographic area than where the new entrant will operate, thereby clearing the incumbent for the benefit of others. In such cases, the Commission has often developed cost sharing requirements, so that all licensees that derive a benefit from a relocation action share the responsibility for the costs of that relocation, regardless of whether they are the first to deploy their system or deploy their systems after other licensees have already deployed and incurred spectrum-clearing costs.[290] We seek comment on whether we should adopt cost-sharing procedures applicable to the relocation of incumbents in the 12.7 GHz band. If so, how should we apportion the expenses of a relocation among those new entrants that benefit from the relocation? What type of formula should be applied? Would that formula differ for the reimbursement of relocated fixed microwave services and non-fixed or mobile BAS and CARS operations? If so, how would it differ, and why? For example, if we were to impose an obligation on a new entrant to relocate all non-fixed and mobile BAS and CARS on a market-by-market basis prior to commencing operations, should we obligate all new entrants that are licensed to operate in a cleared market to pay a *pro rata* share of those costs?[291] What type of test should determine whether a new entrant has triggered a cost-sharing obligation for a relocated microwave link or one or more repacked mobile BAS/CARS systems authorized in any part of a new entrant's licensed area? For example, the Commission adopted a Proximity Threshold Test to determine whether an AWS licensee triggered a cost-sharing obligation for relocated microwave links.[292] If we were to adopt a similar Proximity Threshold Test here, how would the input data in Section 27.1168(a)(3)(i) differ to reflect the higher band of microwave operations in the 12.7 GHz band?

86. Would there be a need to designate one or more clearinghouses to administer the cost-sharing plan and calculate the amount of each beneficiary's reimbursement obligation in accordance with any formula that would be set forth in our rules?[293] Are there opportunities to incentivize the relocation of

[290] *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2445, para. 250; *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, 9548, para. 167 (2013); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, Ninth Report and Order and Order, 21 FCC Rcd 4473, 4478, para. 8 (2006); *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 13999, 14004, para. 10 (2000).

[291] *See AWS Sixth Report and Order*, 19 FCC Rcd at 20753 paras. 72-73 (stating the first entrant may seek reimbursement from subsequently entering licensees for a proportional share of the first entrant's costs in clearing BAS spectrum, on a *pro rata* basis according to the amount of spectrum each licensee is assigned); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd13874, 13893 para. 42 (2010) (*800 MHz Fifth Report and Order*) (stating that an AWS entrant will "enter the band" on the date that the grant of its long-form application becomes a final action and any AWS entrant that enters the band prior to the sunset date will be required to reimburse an entrant that has relocated BAS incumbents a *pro rata* share of the relocation costs).

[292] 47 CFR § 27.1168. In comparison, the Commission determined that an AWS licensee triggered a reimbursement obligation for relocated BAS operations in the 2 GHz band upon grant of its long-form application. *See 800 MHz Fifth Report and Order,* 25 FCC Rcd at 13893, para. 42 (stating that an AWS entrant will "enter the band" on the date that the grant of its long-form application becomes a final action).

[293] A cost-sharing clearinghouse is a third-party that is typically designated by the Wireless Telecommunications Bureau pursuant to delegated authority. *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket 18-22, (continued)

some or all types of incumbents on an accelerated basis?[294] Would some form of the accelerated relocation payment approach such as was used for the 3.7-4.2 GHz band (3.7 GHz band) be appropriate to accelerate clearing some or all incumbent services out of some or all of the 12.7 GHz band?[295]

B. Alternative Approaches for Sharing the Band

87. Here we explore the second alternative option raised in the *12.7 NOI* for making the 12.7 GHz band available for mobile broadband and other expanded use: implementation of certain sharing methodologies among incumbents and new entrants. In the *12.7 NOI*, the Commission sought detailed proposals for promoting coexistence or sharing between potential new terrestrial mobile broadband or other expanded use and existing incumbent licensees in the 12.7 GHz band, rather than sunsetting or relocating incumbents, or repacking of the band.[296] The Commission also sought comment on sharing methodologies such as static or dynamic sharing, using a database or spectrum management system, adopting a nonexclusive licensing system, or application of long-term sensing technology.[297] The Commission noted that, while an automated spectrum management systems have been proven to be effective for devices in the part 96 Citizens Broadband Radio Service (CBRS), for part 15 white space devices, and for 6 GHz unlicensed devices, there are several important differences between them.[298] Under the white space and 6 GHz unlicensed rules, devices must query a database system for a list of available frequencies and permissible operating power on a periodic basis, e.g., once per hour or once per day, and a device may select any available operating frequency and permissible power level from a list provided by the database.[299] The CBRS Spectrum Access Systems (SAS) have greater interactivity with managed devices and may require devices to change frequency or power level or to cease operation within 60 seconds as necessary to prevent interference to incumbent services or devices with a higher spectrum access priority.[300] The sharing methods that have been proven for white space devices and

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Public Notice, 35 FCC Rcd 11859 (WTB 2020); *Wireless Telecommunications Bureau Designates Clearinghouses That Will Administer the 2 GHz PCS Relocation Cost-Sharing Plan*, DA 96-1522, Public Notice, 11 FCC Rcd 10634 (WTB 1996); *see also Wireless Telecommunications Bureau Finds CTIA and PCIA Qualified to Administer the Cost-Sharing Plan for Licensees in the 2.1 GHz Bands,* WT Docket 02-353, Public Notice, 21 FCC Rcd 11265 (WTB 2006).

[294] Based on the unique record presented for the 3.7 GHz band, the Commission adopted two Accelerated Relocation Deadlines—a one year Phase I deadline and a three-year Phase II deadline—"for incumbent space station operators that voluntarily relocate on an accelerated schedule (with additional obligations and incentives for such operators)." *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2413, para. 168.

[295] *See id.* at 2413-14, paras. 168-72 (accelerated relocation).

[296] *12.7 NOI* at *6, para. 14.

[297] *Id.* at *6-*8, paras. 16-21.

[298] *Id.* at *7, para. 17.

[299] *Id.* at *7, para. 17 (citing 47 CFR §§ 15.711(h)(1)-(h)(2), 15.407(k)(8)(iv)). While the D.C. Circuit did remand a portion of the 6 GHz Report and Order to the Commission for further discussion, this limited remand concerned a commenter's arguments regarding unlicensed devices operating without a spectrum management system rather than higher powered devices controlled by the 6 GHz band automated frequency coordination (AFC) system. *See Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020), *aff'd in part and remanded in part*, *AT&T Servs. Inc., v. FCC*, 21 F.4th 841, 853-54 (D.C. Cir. 2021).

[300] *12.7 NOI* at *7, para. 17 (citing 47 CFR § 96.39(c)(2)). Relative to such sharing approaches, we also seek comment on whether any third-party entity that manages, coordinates, or facilitates use of devices by those who are not individually licensed should be required to collect and maintain data documenting operation of devices, including the identity of those persons or entities operating such devices. If so, how long should this data should be retained and made available to the Commission upon request?

CBRS, in conjunction with new or developing sharing technologies, may be used in the 12.7-13.25 GHz band to maximize the use of spectrum.

88. Federated Wireless proposes a Dynamic Spectrum Management System (DSMS) as an effective and efficient way to maximize the use of the 12.7 GHz band, with new and innovative uses of spectrum, while protecting incumbent operations.[301] The DSMS would operate by acquiring information about the incumbent's spectrum use by several methods such as querying a database like the Universal Licensing System (ULS), receiving notifications through an automated portal system, sensing incumbent use, or a combination of two or more of these methods.[302] Federated Wireless also proposes that the Commission adopt a multi-tiered licensing framework in the 12.7 GHz band, similar to the three-tiered regulatory framework used by the SAS in the CBRS band.[303] The three-tier regulatory framework used by the CBRS band enables different classes of users while providing interference protection to incumbents in the 3550-3700 MHz band.[304] Other commenters, such as the Dynamic Spectrum Alliance, NCTA, and the Open Technology Institute and Public Knowledge, all support adopting a shared-licensing framework, emphasizing the benefits that have been achieved in the TV White Space, CBRS, and 6 GHz band.[305]

89. The Society of Broadcast Engineers claims that neither an database-driven spectrum management system nor a spectrum-sensing approach to spectrum sharing will provide adequate protection for electronic news-gathering operations in the band.[306] It adds that spectrum sensing is unable to detect the one-way transmission equipment used in mobile newsgathering, and database-driven systems like the an automated frequency coordination system will not precisely capture mobile BAS operations, which by definition do not have a fixed location found in any database.[307] In its comments, Verizon discourages the use of new and complex dynamic sharing methods or database coordination requirements that may limit investments and complicate new mobile broadband deployments into the 12.7 GHz band.[308] Instead, it recommends the use of an exclusive-use, flexible-rights licensing framework, as well as coordination, repacking, and relocation that is better suited for incumbent operations.[309]

90. We seek comment on using an automated spectrum management system such as the automated frequency coordination (AFC) systems used in the 6 GHz band or spectrum access systems used in CBRS as a method to enable spectrum sharing in the 12.7 GHz band as an alternative to relocating incumbents or repacking the band. To determine whether a new mobile broadband device can operate at a particular location on a given frequency, the device would be required to obtain either a list of permissible frequencies from an automated spectrum management system prior to transmitting or a list of prohibited frequencies on which it cannot transmit. We envision the automated spectrum management system to be a database that is simple to implement. We seek comment on this alternative proposal. What capabilities should be incorporated into the automated spectrum management system? Should it use a centralized model where all data and computations are done in a central location? In this case, the device would establish a connection with the automated spectrum management system, provide its

[301] Federated Wireless Comments at 2.

[302] Federated Wireless Comments at 3.

[303] Federated Wireless Comments at 5.

[304] *See* 47 CFR § 96.11(a).

[305] DSA Comments at 2; NCTA Comments at 4; Open Technology Institute and Public Knowledge Comments at 8 (OTI & PK).

[306] SBE Comments at 5.

[307] SBE Comments at 5.

[308] Verizon Comments at 1-2, 5-6.

[309] Verizon Comments at 6.

location and technical details, and the automated spectrum management system will communicate the list of permissible frequencies (or a list of prohibited frequencies) back to the device. Or should the automated spectrum management system's architecture be de-centralized where the device maintains a local database of incumbent operations and performs the necessary computations to determine which frequencies and power levels can be used without causing harmful interference? Under such a model, how would the local database within the device be kept up to date? What are the trade-offs, including the costs and benefits, between a centralized versus a decentralized model in terms of efficiency, device complexity, and ability to protect incumbent licensee operations?

91. Because BAS was not present in the portions of the 6 GHz band where the AFC systems manage access to spectrum, mobile BAS/CARS was not addressed in the 6 GHz band AFC implementation. The mobile nature of these BAS/CARS operations makes it more difficult to manage spectrum access in real time. Electronic news gathering trucks, while they are mobile by definition, operate in a fixed fashion and direct transmissions towards fixed receive sites when broadcasting from the location of scheduled sporting or news events. Mobile BAS/CARS equipment may also be used for short-range connectivity such as relaying signals from a camera to a news gathering truck. For these types of itinerant mobile-fixed operation, a mobile BAS/CARS licensee could provide advanced notice of its planned operation to enable the automated spectrum management system to protect the BAS operations from harmful interference. We seek comments or proposals on whether these sorts of planned mobile operations can be accommodated on an AFC or SAS-like system. We also seek comment on whether mobile BAS/CARS operations in this band are, in fact, similar to BAS use in the 6 GHz band, and if not whether there are additional considerations that an automated spectrum management would need to address specific to this band. Could such a system be adapted to accommodate unplanned, unscheduled news or other events?

92. Should the automated spectrum management system determine frequency availability using the proposed permissible power limits for base stations, mobile stations, and transportable stations or should it instead determine frequency availability at power levels less than the maximum, and calculate a list of available frequencies and the maximum power permitted on each one? If the automated spectrum management system calculates the maximum power for each frequency, how would it control the power levels of mobile broadband devices to ensure that they operate at permissible levels? How should frequency availability information be reported to the devices? Should the automated spectrum management system report availability for discrete frequency bands, e.g., 10 or 20 megahertz channels, or should it simply report the range or ranges of available frequencies? Alternatively, should the automated spectrum management system simply list the range or ranges of unavailable frequencies?

93. We seek comment on whether device registration with the automated spectrum management system is necessary. Under a registration requirement, a mobile broadband device would transmit identifying information along with its location to the automated spectrum management system before receiving a list of permissible frequencies.[310] Alternatively, a device under a centralized system architecture could provide only its location data and the automated spectrum management system would provide it with the list of permissible channels for that location. Under a decentralized system architecture, registration would not necessarily be required as the device only needs periodic updates of the local fixed service operating environment.

94. We seek comment on the types of security requirements that would be necessary for an automated spectrum management system that manages mobile broadband devices in the 12.7 GHz band. White space devices and databases, CBRS devices and the SAS, as well as 6 GHz AFC systems and unlicensed devices are required to incorporate security measures to ensure that devices communicate only

[310] Fixed white space devices and Citizens Broadband Radio Service Devices are required to register certain information with the white space database or Spectrum Access System, including the device's location, antenna height above ground, device identification information, and contact information for the device's operator. 47 CFR §§ 15.713(g), 96.39(c).

with authorized databases, that all communications and interactions between a database and devices are accurate and secure, and that unauthorized parties cannot access or alter a database, or the list of available frequencies sent to a device.[311] Are similar requirements necessary or appropriate for devices and an automated spectrum management system in the 12.7 GHz band? Are any additional requirements necessary? Do we need to specify security requirements for devices to ensure that the software within them cannot be easily modified to enable operation on frequencies other than those indicated as available by the automated spectrum management system?

C. Licensing and Operating Rules

1. Part 27

95. To encourage intensive investment in, and robust deployment of, next-generation wireless networks, the Commission has adopted or proposed licensing approaches for other mid-band spectrum that are tailored to the unique characteristics of each band. We propose and seek comment on service-specific rules for the 12.7 GHz band. In addressing these issues, commenters should discuss the costs and benefits associated with these proposals and any alternatives that commenters propose.

96. We propose to license the spectrum under our 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 the exception noted below, under this proposal, new mobile broadband and other expanded use licensees in the 12.7 GHz band would comply with licensing and operating rules that are applicable to all Part 27 services,[312] including flexible use,[313] regulatory status,[314] foreign ownership reporting,[315] compliance with construction requirements,[316] renewal criteria,[317] permanent discontinuance of operations,[318] partitioning and disaggregation,[319] and spectrum leasing.[320] We seek comment generally on this approach. With respect to technical rules and performance requirements, we intend to adopt rules based on commenter concerns and our experience and expertise. Finally, we propose to make our licensing, authorization, and service rules governing the 12.7 GHz band applicable nationwide, i.e., within the Contiguous United States (CONUS) as well as the non-contiguous states, territories, and possessions. We seek comment on this proposal.

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[311] *See* 47 CFR §§ 96.39(f), 15.407(k)(8)(v), 15.713(*l*).

[312] *See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal et al.*, Second Report and Order and Further Notice of Proposed Rulemaking and Order, 32 FCC Rcd 8874 (2017) (*WRS Renewal Reform 2nd R&O and FNPRM*) (amending several of the rules applicable to Part 27 services).

[313] Section 303(y) provides the Commission with authority to provide for flexibility of use if: "(1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and opportunity for public comment, that (A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users." Balanced Budget Act of 1997, Pub. L. No. 105-22, 111 Stat. 251, 269-69; 47 U.S.C. § 303(y). *See also* 47 CFR §§ 27.2, 27.3.

[314] 47 CFR § 27.10.

[315] 47 U.S.C. § 310; 47 CFR § 27.12.

[316] 47 CFR § 27.14(k).

[317] *Id.* § 1.949.

[318] *Id.* § 1.953.

[319] *Id.* § 1.950.

[320] *Id.* §§ 1.9001 *et seq*.

2. 12.7 GHz Band Plan

97. The Commission's goal in this proceeding is to make as much of the 12.7 GHz band available for mobile broadband or other expanded uses as possible in order to facilitate next-generation uses of spectrum that are increasingly necessary in the modern, connected world. To promote effective use of the 12.7 GHz band, we propose a technologically neutral policy for licensing the band. That is, we do not make any technological choices or prohibitions, or prefer any particular kind of technology. We do not propose a duplex gap, or distinct blocks for base and mobile that would presume or prohibit FDD or TDD deployments. We seek comment on this proposal. Are there interference issues that we are not currently anticipating that this regime would create? We ask commenters to address interference concerns between FDD and TDD, explain how they could coexist in the band, and discuss coordination and interference rules that must apply if both were to be permitted. In section V.A.3.b above (Mobile BAS/CARS), we propose to set aside 25 megahertz to repack mobile BAS/CARS incumbents.

3. Spectrum Block Sizes for New Licenses

98. Currently, the 12.7 GHz band is licensed for satellite, BAS/CARS fixed and mobile use, and other fixed uses. Under our band plan proposal, most of the 550 megahertz would be made available to new entrants for mobile or other expanded uses, with a small portion of the band set aside to accommodate repacked mobile BAS/CARS incumbents. We seek comment on the appropriate block sizes for these new licenses to best promote efficient and robust use of the band for next-generation wireless technologies. Several commenters note the importance of larger block sizes to the deployment of mobile broadband and other expanded uses; indeed, some commenters indicate that as broadband technologies evolve, operators will be required to have contiguous 100 megahertz blocks to deliver next-generation broadband.[321] In light of this concern, we believe that 100 megahertz blocks will produce the best environment for 5G and future 6G deployments, as large block sizes support faster data speeds and better coverage for next-generation deployments.[322] Additionally, we believe 100 megahertz blocks will afford adequate flexibility to prospective licensees in terms of system design.

99. We seek comment on this proposal (100 MHz blocks) and on how to authorize any spectrum blocks less than 100 megahertz depending on the size of the mobile BAS/CARS repack band. Commenters offering an alternative proposal should detail the advantages and disadvantages of their favored approach, including any costs and benefits, based on what they know about the technical requirements of the respective technologies that either use or could use the band. We recognize that some commenters favor smaller blocks of 50 megahertz.[323] If we adopt smaller sized blocks, should we allow licensees to aggregate the use of these separate licenses into wider bandwidths while retaining the performance requirements of each individual license? Would this approach help ensure that spectrum is put to use, as compared to larger block sizes? Are there any additional considerations that we should take into account in determining the spectrum block sizes to be used for new licenses in this band?

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[321] *See, e.g.* AT&T Comments at 4; Qualcomm Comments at 7 (noting that a 5G base station with 100 MHz bandwidth provides sub-meter positioning accuracy, and that more bandwidth will allow for more precise positioning and improve overall network performance); Verizon Comments at 9; Ericsson Reply at 10-11; 5G Americas Reply at 6.

[322] "[T]he Commission should prioritize large bandwidths such as 50-megahertz or 100-megahertz channel blocks, the latter which 'have become international best practice and are implemented in the majority of 5G-leading markets.'" Verizon Comments at 9 (quoting GSMA, 5G Spectrum: GSMA Public Policy Position, at 5 (June 2022), https://www.gsma.com/-spectrum/wp-content/uploads/2022/06/5G-Spectrum-Positions.pdf).

[323] Competitive Carriers' Association Reply at 5; T-Mobile Comments at 14; US Cellular Reply at 5. Some Commenters, such as T-Mobile, argue that 100 megahertz blocks would orphan a 50 megahertz block, or otherwise require the Commission to license the band with blocks of varying size. T-Mobile Comments at 14; US Cellular Comments at 6. We note that under our band plan proposal, some spectrum would be designated for repacking incumbent mobile BAS/CARS operations.

4. Geographic License Area Sizes

100. Consistent with our approach in several other bands used to provide fixed and mobile services, we propose to license the 12.7 GHz spectrum on an exclusive, geographic-area basis.[324] Geographic-area licensing provides flexibility to licensees, promotes efficient spectrum use, and helps facilitate rapid assignment of licenses. We seek comment on this approach, including the costs and benefits of adopting a geographic area licensing scheme. In the event that a party does not support using geographic licensing, it should explain its position, describe what type of licensing scheme it supports, and identify the costs and benefits associated with its alternative licensing proposal.

101. In determining the appropriate geographic license size, the Commission considers several factors, including: (1) facilitating access to spectrum by both small and large providers; (2) providing for the efficient use of spectrum; (3) encouraging deployment of wireless broadband services to consumers, especially those in rural areas and Tribal lands; and (4) promoting investment in and rapid deployment of new technologies and services.[325] In light of these statutory considerations, we propose to issue flexible use licenses on a Partial Economic Area (PEA) basis.[326] We ask commenters to discuss and quantify the economic, technical, and other public interest considerations of licensing on a PEA basis. We observe that the question of geographic license area sizes intersects with the question of whether to issue exclusive or shared licenses: those that favor exclusive licenses often prefer PEAs or larger, whereas those that favor shared licensing regimes prefer smaller areas, such as counties.[327] Because we propose to license the band exclusively, we also propose PEAs. In our judgment, this area size will also help promote rural deployments by facilitating access to spectrum by small and regional service providers and beyond.[328] We seek comment on licensing the 12.7 GHz band on a PEA basis.

102. Some commenters seek smaller areas, such as counties.[329] They argue that these smaller areas help smaller businesses and rural areas.[330] Could smaller license areas increase the possibility of interference between adjacent areas and complicate a licensee's ability to fully deploy services using their licensed spectrum in their service areas?[331] If so, are there other reasons that would nevertheless support adopting smaller license areas such as promoting competition?[332] Would smaller or larger areas promote or complicate cost-sharing for relocation of incumbents? Are there any additional considerations that we should take into account when determining the geographic license areas sizes for new licenses in the 12.7 GHz band when weighing the factors listed above? For example, could a smaller license area help

[324] *See, e.g.*, 47 CFR § 27.6 (h), (i) (AWS-1 and AWS-4, respectively).

[325] *See, e.g.*, *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, 25174, para. 31 (2003) (*AWS-1 Service Rules R&O*).

[326] *See* 47 CFR pt. 27, subpt. A, Appx. A – List of Partial Economic Areas with Corresponding Counties.

[327] *But see* RWA Comments at 2 (arguing for counties and not PEAs for licensed area size).

[328] *See, e.g.*, US Cellular Reply at 7.

[329] RWA Comments at 2-3; OTI & PK Comments at 7; WISPA Reply at 1-2, 7; *see also see* Letter from Traci Biswese, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352, at 3 (May 11, 2023) (NCTA May 11, 2023 Ex Parte)

[330] RWA points out that the propagation characteristics of the band warrant adoption of smaller-sized license areas. RWA Comments at 3. In proposing PEAs, we are making the judgement that it propagates sufficiently far to justify PEA-sized areas. We also seek comment on this approach.

[331] *See* T-Mobile Reply at 6.

[332] *See* NCTA May 11, 2023 Ex Parte at 3.

promote deployment in Tribal areas? We note that several commenters suggest providing priority access to spectrum over Tribal lands to Tribal entities.[333]

5. License Term and Renewal

103. We propose to establish a 10-year license term for new mobile broadband and other expanded use licenses in the 12.7 GHz band. We believe that a 10-year term serves our goal of providing licensees with flexibility to develop this spectrum as the market demands and to employ innovative technologies which may not be available immediately upon licensing. We acknowledge that the Commission has adopted license terms longer than 10 years to account for delays in relocating incumbent operations. In this case, however, because the existing use of the band is relatively light, we are proposing our standard 10-year license term along with an additional year (relative to some services) to meet the proposed interim buildout requirement. We also propose to apply our general renewal requirements for wireless radio service licenses.[334] We seek comment on these proposed license term and renewal requirements, as well as on the costs and benefits of these proposals.[335] Are there alternative license terms that might be better suited for this band?[336] If an alternative license term is better, what impact would it have on investment or deployment, particularly for smaller or rural entities, and how could we determine its costs and benefits?

6. Performance Requirements

104. The Commission establishes performance requirements to ensure that spectrum is intensely and efficiently used. The Commission has applied different performance and construction requirements to different spectrum bands based on considerations relevant to those bands.[337] We continue

[333] *See* Open Technology Institute and Public Knowledge May 10, 2023 *Ex Parte* at 3 ("With regard to creating a rural Tribal window for any spectrum authorized for new licensees in the 12.7 GHz band, the success of the 2.5 GHz window demonstrates the enormous value to Tribes of creating the opportunity for greater spectrum access on Tribal lands. This would also be consistent with the Memorandum of Understanding between the Department of the Interior and the Department of Commerce National Telecommunications and Information Administration, 11/23/2022. Available at https://www.bia.gov/sites/default/files/dup/inline-files/mou_esb46-009818_doi-fcc-ntia_electromagnetic_spectrum_on_tribal_lands_2022-11-23_final_fcc_ntia_doi_signed_508.pdf "). *See also* Tribal Ready May 10, 2023 *Ex Parte* ("The Commission has previously recognized the value of Tribal set asides in promoting deployment as recently as the 2.5 GHz band. The 12 GHz band can and should also be an option to help Native Americans close the digital divide.").

[334] *See* 47 CFR § 1.949 (Application for renewal of license). The *WRS Renewal 2nd R&O and FNPRM* adopted a unified framework for construction, renewal, and service continuity rules for flexible use geographic licenses in the Wireless Radio Services. *See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal et al.*, WT Docket No. 10-112, Second Report and Order and Further Notice of Proposed Rulemaking and Order, 32 FCC Rcd 8874 (2017) (*WRS Renewal Reform 2nd R&O and FNPRM*). *Accord*, *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, 2390, para. 106 (2020) (*3.7 GHz Report and Order*).

[335] The Communications Act does not specify a term limit for wireless radio services licenses. The only statutory limit on license terms is eight years for licenses in the broadcast services. *See* 47 U.S.C. § 307(c)(1); *see also* 47 CFR § 73.1020(a).

[336] *See, e.g.*, 47 CFR § 27.14(k) (AWS-3 licenses have a 12-year initial license terms and 10-year renewal terms), (l) (600 MHz band licenses have 12-year initial license terms and 10-year renewal terms).

[337] *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*, Report and Order, 28 FCC Rcd 9483, 9558-59, para. 195 (2013) (requiring 40 percent population coverage within four years of initial grant and 75 percent population coverage within 10 years of initial grant); *see also Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, Report and Order, 29 FCC Rcd 4610, 4659-60, para. 135 (2014) (requiring 40 percent population coverage within six years of initial grant and 75 percent population coverage within 12 years of initial grant);

(continued)

to believe that performance requirements play a critical role in ensuring that licensed spectrum does not lie fallow.

105. In response to the *12.7 NOI*,[338] AT&T, T-Mobile, Intelsat, Ericsson and others note that the 12.7 GHz band shares many characteristics with millimeter wave (mmW) spectrum.[339] Despite these similarities, T-Mobile and Intelsat suggest that performance requirements for the 12.7 GHz band should not necessarily be similar to those that apply to the mmW spectrum, given the difficulties mmW bands have had fulfilling buildout requirements.[340] Moreover, T-Mobile suggests that the Commission carefully consider buildout requirements and allow for flexibility based on the unique needs of the spectrum being used and the geographic area being served.[341]

106. As with other part 27 services, we propose to adopt specific quantifiable benchmarks for different types of operations. For the 12.7 GHz band, we propose to require licensees offering mobile or point-to-multipoint services to provide reliable signal coverage and offer service to at least 30% to 45% of the population in each of their license areas within five years[342] of the license issue date (interim performance benchmark), and to at least 60% to 80% of the population in each of their license areas within ten years from the license issue date (final performance benchmark).[343] We seek comment on this proposal including the specific population coverage percentage appropriate for the interim and final benchmarks. We recognize that, relative to the recently established 3.45 GHz Service, which has buildout deadlines at years four and eight,[344] we are proposing an additional year for 12.7 GHz band licensees to meet the proposed first buildout requirement and an additional two years to meet the second buildout requirement. We believe this additional time is warranted given the lack of industry standards and 12.7 GHz band mobile broadband equipment. We propose licensees providing fixed point-to-point service would be required to demonstrate within five years of the license issue date (interim performance benchmark) that they have four links operating and providing service, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, a licensee relying on point-to-point service would need to demonstrate that it has at least one link in operation and providing service, either to customers or for internal use, per every 67,000 persons within a

(Continued from previous page)
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd 6567, 6877-78, para. 764 (2014).

[338] *See, e.g.*, *12.7 NOI* at *11, para. 31.

[339] AT&T Comments at 1; Ericsson Comments at 8; T-Mobile Comments at 14; Intelsat Reply at 11-12.

[340] T-Mobile Comments at 14-15 (citing an NTIA Study that examined outdoor propagation in the 37-40 GHz band in Boulder, Colorado); Intelsat Reply at 11; T-Mobile Reply at 4-5.

[341] T-Mobile Comments at 15.

[342] For AWS-4, AWS H Block, and 3.45 GHz Service, the first performance benchmark is 4 years from the date of the initial license and the second performance benchmark is 8 years from the date of the initial license for AWS-4 and 3.45 GHz Service and 10 years for H Block. For services with incumbent transitions, the first performance benchmark ranges from 6 years (AWS-3, 600 MHz) to 8 years (3.7 GHz Service) from the date of the initial license, and the second performance benchmark is 12 years (AWS-3, 600 MHz, 3.7 GHz Service). *See* 47 CFR § 27.14(q),(r),(s),(t),(v),(w).

[343] Our proposals and questions comport with actions taken for other licenses taking into account the unique characteristics of the 12.7 GHz band, e.g., presence of incumbents and the location of this mid-band spectrum—significantly higher than 3.7 GHz but significantly lower than mmW spectrum. *See, e.g.*, 47 CFR §§ 27.14(v)(1) (requiring a 3.7 GHz Service licensee providing mobile or point-to-multipoint service to cover 45% of population within eight years of initial grant and 80% population coverage within 12 years of initial grant); 27.14(w)(1)(i) (requiring a 3.45 GHz Service licensee providing mobile or point-to-point service to cover 45% of population within 4 years and 80% of population within 8 years of initial grant); 47 CFR §§ 30.103, 30.104(a) (requiring a UMFUS licensee providing mobile or point-to-multipoint service to cover 40% of population within ten years).

[344] *See* 47 CFR § 27.14(w)(1)(i).

license area. We propose to require licensees relying on point-to-point service to demonstrate within ten years of the license issue date (final performance benchmark) that they have eight links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, we propose to require a licensee relying on point-to-point service to demonstrate it is providing service and has at least two links in operation per every 67,000 persons within a license area.[345]

107. We also propose alternate Internet of Things (IoT) performance requirements in order to allow for flexibility to provide services potentially less suited to a population coverage metric. Specifically, we propose that licensees providing IoT-type services would have flexibility to demonstrate that they offer geographic area coverage of at least 25% to 35% of the license area at the interim (five-year) performance benchmark, and geographic area coverage of at least 50% to 65% of the license area at the final (ten-year) performance benchmark.[346] We seek comment on this proposal including the specific geographic area coverage percentage appropriate for the interim and final benchmarks metrics appropriate in the 12.7 GHz band. Commenters should discuss the appropriate metric to accommodate such service offerings or other innovative services in the 12.7 GHz band, as well as the costs and benefits of an alternative approach. We also seek comment on whether to adopt renewal-term performance obligations.

108. *Compliance Procedures*. We propose that to demonstrate compliance with these performance requirements, licensees shall use the most recently available decennial U.S. Census Data at the time of measurement and shall base their measurements of population or geographic area served on areas no larger than the Census Tract level. The population or area within a specific Census Tract (or other acceptable identifier) would be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population or geographic area within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license. If a licensee does not provide reliable signal coverage to an entire license area, the license must provide a map that accurately depicts the boundaries of the area or areas within each license area not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the

[345] *See, e.g.,* 47 CFR §§ 27.14(v)(1) (requiring a 3.7 GHz Service licensee providing point-to-point service to demonstrate within 8 years and 12 years of initial grant that they are operating four links and eight links, respectively, and providing service to customers or for internal use if the license area is equal to or less than 268,000, and if the population is greater than 268,000, that they are operating at least one link within 8 years and at least two links within 12 years and providing service to customers or for internal use per every 67,000 persons within a license area); 27.14(w)(1)(ii) (requiring a 3.45 GHz Service licensee providing point-to-point service to demonstrate within 4 years and 8 years of initial grant that they are operating four links and eight links, respectively, and providing service to customers or for internal use if the license area is equal to or less than 268,000, and if the population is greater than 268,000, that they are operating at least one link within 4 years and at least two links within 8 years and providing service to customers or for internal use per every 67,000 persons within a license area); 47 CFR §§ 30.103, 30.104(a) (requiring a UMFUS licensee providing point-to-point service to demonstrate within 10 years of initial grant that they are operating four links and providing service to customers or for internal use if the license area is equal to or less than 268,000, and if the population is greater than 268,000, that they are operating at least one link and providing service to customers or for internal use per every 67,000 persons within a license area).

[346] *See, e.g.,* 47 CFR §§ 27.14(v)(2) (requiring a 3.7 GHz Service licensee providing Internet of Things service to offer geographic area coverage of 35% of the license area within 8 years of initial grant and geographic area coverage of 65% of the license area within 12 years of initial grant); 27.14(w)(1)(iii) (requiring a 3.45 GHz Service licensee providing Internet of Things service to offer geographic area coverage of 35% of the license area within 4 years of initial grant and geographic area coverage of 65% of the license area within 8 years of initial grant); 47 CFR §§ 30.103, 30.104(b) (requiring a UMFUS licensee providing Internet of Things or other services deployed along non-traditional lines to offer geographic area coverage of 25% of the license area within 10 years of initial grant).

coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

109. *Penalty for Failure to Meet Performance Requirements.* Along with performance benchmarks, we propose to adopt meaningful and enforceable penalties for failing to meet those benchmarks. We propose that, in the event a licensee fails to meet the first performance benchmark, the licensee's final benchmark and license term would be reduced by two years, thereby requiring it to meet the final performance benchmark two years sooner (at 8 years into the license term) and reducing its license term to 8 years. If a licensee fails to meet the final performance benchmark for a particular license area, its authorization for each license area in which it fails to meet the performance requirement shall terminate automatically without Commission action. We seek comment on this proposal and on which penalties will most effectively ensure timely buildout.

110. We seek comment on how, in the event a 12.7 GHz band licensee's authority to operate terminates, its spectrum rights should become available for reassignment pursuant to the licensing framework we adopt for this band. We also seek comment on whether, consistent with the Commission's rules for other part 27 licenses, we should require that any 12.7 GHz band flexible use licensee that forfeits its license for failure to meet its performance requirements be precluded from regaining that license. Finally, we seek comment on other performance requirements and enforcement mechanisms that would effectively ensure timely buildout.

7. Open Eligibility

111. We propose to adopt an open eligibility standard for licenses in the 12.7 GHz band, consistent with established Commission practice.[347] An open eligibility standard should encourage the development of new technologies, products, and services, while helping to ensure efficient use of this spectrum. We seek comment on this assumption. We note that an open eligibility approach would not affect citizenship, character, or other generally applicable qualifications that may apply under our rules.[348] Commenters should discuss the costs and benefits of the open eligibility proposal on competition, innovation, and investment.

8. Mutually Exclusive Applications for New Licenses

112. As discussed above, we propose to use an exclusive geographic area licensing scheme for the 12.7 GHz spectrum, which will permit the filing of mutually exclusive applications. The Commission's statutory authority to resolve mutually exclusive applications for initial licenses through a system of competitive bidding has lapsed. Accordingly, in the event we determine to adopt a mutually exclusive application approach, we seek comment on how the Commission should resolve mutually exclusive applications for new initial licenses in the 12.7 GHz band in light of the lapse in our authority to use competitive bidding. In the event that the Commission's statutory authority with respect to auctions is restored, we delegate authority to WTB and the Office of Economics and Analytics to seek comment on appropriate competitive bidding rules and procedures, consistent with prior Commission guidance.

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[347] The Commission has determined in a number of services that eligibility restrictions on licenses may be imposed only when open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm. This approach relies on market forces absent a compelling showing that regulatory intervention to exclude potential participants is necessary. *See, e.g.*, *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16193, paras. 241-42 (2012); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150 *et al*., Second Report and Order, 22 FCC Rcd 15289, 15381, 15383-84, paras. 253, 256 (2007) (*700 MHz Second Report and Order*); *Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, WT Docket No. 02-146, Report and Order, 18 FCC Rcd 23318, 23346-47, para. 70 (2003).

[348] *Id.* §§ 301, 308(b), 310.

9. Mobile Spectrum Holdings Policies

113. Spectrum is an essential input for the provision of mobile wireless services, and ensuring access to and the availability of sufficient spectrum is crucial to promoting the competition that drives innovation and investment.[349] The Commission has held that the Communications Act requires a close examination of the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum to ensure that spectrum is allocated and assigned in a manner that serves the public interest, convenience and necessity, and avoids the excessive concentration of licenses.[350] In this *Notice of Proposed Rulemaking*, we seek comment generally on whether to adopt limitations on the aggregation of spectrum holdings in the 12.7 GHz band in order to meet our statutory requirements and to ensure competitive access to the band. We seek comment on whether the technical and market characteristics of the 12.7 GHz band warrant such limitations and, if so, whether implementation of such limitations should be through the Commission's total spectrum screen, a separate screen, a limit on initial licensing, or other means, as discussed below.[351]

114. *Total Spectrum Screen*. The Commission examines the suitability and availability of spectrum to determine whether particular bands should be included within the total spectrum screen.[352] Suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its use for mobile services.[353] Spectrum is considered "available" if it is "fairly certain that it will meet the criteria for suitable spectrum in the near term, an assessment that can be made

[349] *Communications Marketplace Report*, GN Docket No. 22-203, Report, FCC 22-103, at 64, para. 82 (Dec. 30, 2022) (*2022 Communications Marketplace Report*); *see* NCTA May 11, 2023 Ex Parte at 2 (arguing for the importance of promoting competition through avoiding excessive concentration).

[350] *Policies Regarding Mobile Spectrum Holdings Expanding the Economic Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, Report and Order, 29 FCC Rcd 6133, 6137, para. 8 (2014) (*Mobile Spectrum Holdings Report and Order*).

[351] In 2004, the Commission established its framework for case-by-case review of spectrum aggregation (and market concentration), in which it established a total spectrum screen "trigger" of approximately one-third of the total suitable and available spectrum for commercial mobile radio services. *Applications of AT&T Wireless Inc. and Cingular Wireless Corporation For Consent To Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21525, 21568-69, paras. 4, 106-112 (2004) (*Cingular-AT&T Wireless Order*). This screen was subsequently expanded and applied to mobile telephony/broadband services. *See, e.g.*, *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17469-70, paras. 45-46 (2008). In 2008, the Commission determined that its case-by-case review would also apply to the initial licensing of spectrum acquired at auction, similar to the Commission's analysis of secondary market transactions. *Union Telephone Company and Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73*, Order, 23 FCC Rcd 16787, 16791-92, 16796, paras. 9, 18 (2008). In 2014, the Commission determined that it would treat as an "enhanced factor" in its case-by-case review any proposed increase in below-1-GHz spectrum holdings resulting in the acquiring entity holding approximately one-third or more of the suitable and available spectrum below 1 GHz. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88. In 2016, the Commission adopted a separate mmW spectrum threshold that would apply to its case-by-case review of proposed secondary market mmW transactions. *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8081, 8083-84, paras. 184, 189 (2016) (*Spectrum Frontiers 1st R&O and FNPRM*).

[352] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70, paras. 71-75.

[353] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 71.

at the time the spectrum is licensed or at later times after changes in technology or regulation that affect the consideration."[354]

115. We seek comment on whether, for purposes of the spectrum screen, the 12.7 GHz band will be "suitable" and "available" for the provision of mobile telephony/broadband services shortly after the spectrum is assigned. To the extent we find that the 12.7 GHz band is "suitable and available," we seek comment on whether we should include the band within our total spectrum screen or within a separate spectrum screen, such as the existing mmW threshold.[355] To that end, we seek comment on which bands are most similar in technical characteristics with the 12.7 GHz band.[356]

116. *Initial licensing*. Should there be a limit on the amount of 12.7 GHz band spectrum held by a single entity at the licensing stage? If so, what should that limit be and why? Should the Commission consider the factors set forth in the *Mobile Spectrum Holdings Report and Order*[357] in determining if a limit at the initial licensing stage is appropriate? Should the Commission's determination also be based on the extent to which competitors have opportunities to gain access to alternative bands that would serve the same purpose as the 12.7 GHz band.[358]

D. Technical Rules

1. Power Limits

117. The Commission establishes power limits for wireless services to help limit the potential for harmful interference, among operators using the same frequency bands (for example, in neighboring geographic areas) as well as among operators using adjacent bands. The determination of an appropriate power limit for a particular band is informed by the technical characteristics of the band, as well as the services expected to be deployed.[359] Thus, section 30.202 of the Commission's rules restricts the power for fixed base stations operating in connection with mobile systems to a maximum equivalent isotropic radiated power (EIRP) density of +75dBm/100 MHz.[360] Under section 30.202, mobile stations and transportable stations are each limited to a maximum EIRP of +43 dBm and +55 dBm, respectively.[361] Since the adoption of these power limits, we have seen mmW wave deployments in various parts of the USA, chiefly in urban areas.

118. Setting appropriate power limits for the 12.7 GHz band requires an understanding of what services may be deployed in the band. It is important that new technologies and feasible visions for future wireless deployments are considered so that the appropriate power limits are set to advance wireless innovation. Ericsson asserts that the characteristics of the 12.7 GHz band make it a good fit for future 6G technologies and smart-city applications, and that use of the 12.7 GHz band would complement

[354] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 71 (internal quotation marks omitted).

[355] *See 2022 Communications Marketplace Report*, FCC 22-103, at 66, para. 85 and Fig. II.B.9.

[356] *See, e.g.*, *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Third Report and Order, Memorandum Opinion and Order, and Third Notice of Proposed Rulemaking, 33 FCC Rcd 5576, 5612, para. 96 (2018); *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987, 6022-23, para. 102 (2021) (*3.45 GHz Second Report and Order*); *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, 2382-84, paras. 85-88 (2020) (*3.7 GHz Order*).

[357] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6192-93, paras. 143-44.

[358] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6193, para. 144.

[359] *See, e.g., Spectrum Frontiers 1st R&O and FNPRM*, 31 FCC Rcd at 8110-12, paras. 276-80.

[360] 47 CFR § 30.202(a).

[361] *Id.* § 30.202(b), (c).

spectrum in the 3-8 GHz range.[362] Qualcomm states the 12.7 GHz Band is ideal for the deployment of the latest 6G technological advances which will offer coverage levels only available today in the lower mid-band spectrum range; these technologies, such as Giga Multiple-Input Multiple-Output (MIMO), will overcome greater signal losses in this upper range through higher beam directionality and offer ubiquitous coverage, low latency, and high capacity.[363] Qualcomm adds that increased data rates will support innovative use cases like deeper immersion into digital and virtual worlds with boundless augmented, virtual, extended and mixed reality (AR/VR/XR/MR) applications and advanced sensing, which will allow for real-time mapping of the physical world to a digital or virtual copy.[364] Besides 6G operations, we seek comment on what other feasible new services or technologies are envisioned to be deployed in the band and whether they would require particular power level profiles.

119. Based on the record in response to the *12.7 NOI*, and our technical expertise, we propose to adopt the same power limits that are applied to UMFUS operations.[365] Specifically, for base stations, mobile stations, and transportable stations, we propose to adopt an EIRP limit of +75 dBm/100 MHz (or +72dBm/50 MHz depending on the final channel size allocations), +43 dBm, and +55 dBm, respectively. We believe these limits to be appropriate because we agree with commenters that RF characteristics in this band more closely resemble mmW transmissions than lower mid-band transmissions.[366] Furthermore, we agree with commenters that higher frequencies are subject to greater signal attenuation.[367] Commenters from the terrestrial mobile wireless industry have submitted general feedback urging the Commission to establish power limits in a way that does not hinder development and innovation in this band while providing sufficient coverage for the public.[368] We seek comment on our proposed power limits for this band. If beams incorporating higher directionality are employed in this band, we seek comment on including provisions similar to section 101.145(c) to protect GSO satellites, particularly if we grandfather existing FSS operations.

120. We seek comment on whether incumbent satellite services and new terrestrial mobile services can coexist if the latter will be subject to the power limits that we propose above. Various satellite industry interests have expressed concerns that satellite operations cannot successfully co-exist with mobile terrestrial broadband networks in the 12.7 GHz band.[369] Overall, they identify two chief sources of interference: FSS uplink transmissions can interfere with receiving terrestrial mobile stations, and aggregate emissions of high power terrestrial mobile stations can also interfere with the satellite antenna of an FSS system receiving in the band.[370] As noted above, Verizon also questions how any

[362] Ericsson Comments at 3, 8.

[363] Qualcomm Comments at 7.

[364] Qualcomm Comments at 3.

[365] *See* 47 CFR § 30.202.

[366] *See, e.g.,* AT&T Comments at 1; Ericsson Comments at 8; T-Mobile Comments at 14; Intelsat Reply a 11-12.

[367] *See* CTIA Comments at 9-10 (arguing that the greater propagation loss at 12.7 GHz as compared to that at low mid-band spectrum will require even higher power levels to provide meaningful coverage range and capacity); Ericsson Comments at 2, 10; Nokia Comments at 2; Verizon Comments at 9 ("The Commission should also promote standard-power deployments and further consider power levels greater than those contained in Part 27 of the Commission's rules to compensate for the higher propagation losses in this frequency range."); CCA Reply at 1-2, ("[H]igh-powered use will provide the greatest potential for innovation and will aid the wireless industry in serving American consumers."); CCA Reply at 5 ("For many CCA members who serve suburban and rural areas, low-power operations may be too costly because of the number of cell sites needed to provide sufficient coverage."); *accord* 5G Americas Reply at 7.

[368] *See, e.g.,* T-Mobile Reply at 9, 12; 5G Americas Reply at 7.

[369] *See* Eutelsat Comments at 4-5; Hispasat Comments at 6-8; Intelsat/SES Comments at 12-14.

[370] Hispasat Comments at 6.

incipient terrestrial mobile services would coexist with a substantial number of new NGSO FSS deployments in the band.[371] CTIA asserts that coexistence is possible between new entrants and incumbent FSS, because FSS space stations will be protected based on the terrestrial service obligations contained in Radio Regulations Table 21-1, which includes a maximum equivalent isotropic radiated power ("EIRP") of +45 dBW for a station in the fixed or mobile service.[372] We agree with CTIA that, as long as terrestrial mobile broadband operations do not exceed the power limits that we propose, they should pose no danger of exceeding any aggregate interference level at any victim receivers on satellites operating in the band, but we seek comment on this observation. Furthermore, proposed grandfathered FSS earth stations are not susceptible to harmful interference because they do not receive in this band. Nevertheless, we seek comment on whether satellite services and terrestrial mobile services can coexist with power limits of section 30.202. Is it appropriate to adopt these power limits for the 12.7 GHz band for base station, mobile station, and transportable stations? Would it be useful to limit the power terrestrial transmitters may emit toward higher elevation angles to protect satellite receivers from aggregate emissions?

121. We also received comments urging the Commission to conduct further technical studies before establishing power limits for 12.7 GHz band.[373] Nokia recommends a detailed analysis regarding the EIRP limit for flexible use in the 12.7 GHz band.[374] It states that such an analysis should consider "(1) the impact of relocating some incumbent services from the 12.7 GHz band, and a potential relaxation of maximum EIRP requirements, (2) the coexistence scenarios involving incumbent services in the 12.7 GHz band and in the lower and upper adjacent bands, and (3) receiver characteristics of incumbent users, including out-of-band receiver blocking performance."[375] Are there other comprehensive technical studies that could shed light on the appropriate power levels for this band? What are the technical reasons that it is appropriate or not appropriate to adopt the part 30 power limits? Are there alternative power limit proposals that would serve the public interest better and what are the technical data and analysis for these reasons? Are there alternative metrics for controlling power in this band? We further seek comment on any additional considerations that should be included to provide adequate protection for services in the adjacent bands. For any alternative or additional proposals, metrics, or considerations, commenters should include technical details, including any and/or all assumptions and parameters. For example, how would the in-band requirements specified in various ITU documents, discussed above, translate to out-of-band requirements in the 12.7 GHz? Is any further information or assumptions necessary, particularly concerning out-of-band receiver blocking performance for receivers in the adjacent bands? Commenters advocating for particular technical rules to protect operations in adjacent bands, including DBS, NGSO FSS, MVDDS, active spaceborne sensors, and ARNS, should provide detailed information on the receiver, antenna, and operational characteristics for such services operating in the adjacent bands.

[371] Verizon Comments at 8 & n.26 (citing *SpaceX Gen2 Order*, FCC 22-91 at para. 49 (authorizing the construction, deployment, and authorization of up to 7,500 satellites in the 12.75-13.25 GHz band, among other segments)); *see supra* note 276 and accompanying text.

[372] EIRP power limits in ITU radio regulations Table 21-1 does not specify a reference bandwidth, so this power limit is 45dBW (75dBm) regardless of the reference bandwidth, i.e. any reference bandwidth may be used for the power limit. Therefore we maintain that our proposed limit of 75dBm/100MHz is at least as conservative as the ITU radio regulations power limit. For example the ITU regulations would permit 75dBm/1MHz, which would be higher power than what we propose.

[373] Hispasat Comments at 13-14; Nokia Comments at 6.

[374] Nokia Comments at 7-8.

[375] Nokia Comments at 7-8.

2. Out-of-Band Emissions (OOBE) Limits

122. We seek comment on appropriate out-of-band emissions (OOBE) limits for base and mobile stations in the 12.7 GHz band. Section 101.111(a)(2)(i) of the Commission's rules establishes an emission limit for fixed stations operating with digital emissions in this band expressed as A = 35 + 0.8(P −50) + 10 Log10 B, where A is attenuation below the mean output power of the transmitter, B is the authorized bandwidth in megahertz, and P is the percentage by which the transmitter bandwidth is removed from the carrier frequency.[376] Under this provision, attenuation greater than 80 decibels or to an absolute power of less than −13 dBm/1MHz is not required.[377] This emission limit is defined in conducted fashion.[378] These rules are intended to support various fixed microwave technologies with conventional antenna systems.

123. For most mobile systems, the Commission has generally required licensees to attenuate their unwanted emission power below the transmission mean power (P) by a factor of at least 43 + 10log10(P), or -13 dBm/MHz for any emissions on frequencies outside the licensee's authorized spectrum.[379] These requirements take effect at the edges of the assigned frequencies (e.g., channel, block, or band), and may be used as a basis for developing further requirements that relate to transmitter performance by industry standard organizations.[380] This limit is applied equally both to base stations and to mobile stations, and compliance with this limit in existing systems, where access to the RF port of the antennas is conveniently available, is based on conducted measurement of transmission power at the output of the individual RF port.[381]

124. In response to the *12.7 NOI*, a few commenters suggest specific criteria for out-of-band emission limits. For example, 5G Americas and CTIA suggest that new broadband users should be subject to the same out-of-band emission limits that apply to the existing incumbents in the band.[382] T-Mobile and Ericsson suggest that the Commission consider adopting the same out-of-band emission limit of –13dBm/MHz that was adopted in the Spectrum Frontiers proceedings for the Upper Microwave Flexible Use Service in the upper mmW spectrum bands.[383] T-Mobile argues that this existing out-of-band emission limit is sufficient to protect services in adjacent bands.[384] Hispasat, Oneweb, Dish, and SpaceX suggest that further analysis should be conducted to determine whether the existing out-of-band emissions limit is, in fact, sufficient to protect users in adjacent bands.[385] Due to the propagation characteristics in the 12.7 GHz band signal attenuation with distance is higher than at lower frequencies and to overcome those losses higher gain antennas are typically used, therefore we believe that deployments in this band are likely to use integrated multiple element antenna arrays that have characteristics more similar to antennas in the UMFUS bands than those in the PCS and AWS bands. As

[376] 47 CFR § 101.111(a)(2)(i).

[377] *Id*.

[378] *Id.*

[379] *See, e.g.,* 47 CFR § 22.359(a), 47 CFR § 27.53(a)(1)(i).

[380] *Id.*

[381] *Id.*

[382] *See* CTIA Comments at 13; 5G Americas Comments at 2.

[383] *See* Ericsson Comments at 11; T-Mobile Comments at 14 & n.47 (citing *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988, para. 34 (2017); Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, Fourth Report and Order, 33 FCC Rcd 12168, paras. 11-12 (2018)).

[384] *See* T-Mobile Reply at 10.

[385] *See* OneWeb Comments at 4; DISH Reply at 7; Hispasat Reply at 13; SpaceX Reply at 6.

such, measurement of OOBE based on conducted measurements may be challenging, as was recognized to be the case for the mmW bands.[386] In order to achieve higher antenna gain in the compact format necessary for mobile operation and beam steering necessary for base stations to track mobile devices, we expect that mobile and base stations in the 12.7 GHz band, much like the mmW bands, will have tens of radiating elements with multiple power amplifiers. Recognizing the potential measurement challenges posed by having a requirement based on conducted measurements, we propose to provide flexibility for the out-of-band emission limits to be measured either using conducted power or radiated power, and we seek comment on this proposal. With lack of RF ports, the emission measurement needs to be made in radiated fashion, and the antenna gain must be characterized and subtracted from the radiated measurement if the emission limit is to be defined in conducted fashion. Ericsson suggests that in order to support adaptive antennas, either the conductive power or the total radiated power of any emission outside a licensee's frequency block shall be −13 dBm/MHz or lower.[387]

125. In light of the discussion above, we propose to adopt a requirement that the conductive power or the total radiated power of any emission outside a licensee's frequency block shall be −13 dBm/MHz or lower and seek comment on this proposal. We seek comment on whether a radiated emission limit of –13dBm/MHz can be supported by transmitters operating in the 12.7 GHz band. In this *Notice of Proposed Rulemaking* we also propose to retain a portion of the band either at the top or bottom edge of the band, or both, to accommodate re-packed mobile TV pickup operations. From the perspective of protecting services in adjacent bands from out-of-band emissions and harmful interference, does one of these alternatives offer more benefits than the others? Should the out-of-band emissions limits be different if mobile services are adjacent to incumbent TV pickup operations, as opposed to being directly adjacent to the 12.7 GHz or 13.25 GHz band edges? Should the out-of-band emissions limits be applied at the band edge between new flexible use services and BAS, or is it necessary to define out-of-band emissions limits at the edges of the 12.7 and 13.25 GHz band, regardless of any buffer created by BAS repack bands?

126. We note that out-of-band emissions and spurious emissions characterize the overall emission performance of a transmitter, and that the measurement procedures for spurious emissions at antenna terminals and the field strength of spurious radiation are described in the Commission's rules. For bands higher than 1 GHz, for example PCS and AWS-1, compliance with the emission rule is based on a resolution bandwidth of 1 megahertz or greater, except within the first 1 megahertz.[388] In the first 1 megahertz bands immediately outside and adjacent to the channel block, a resolution bandwidth equal to at least 1 percent of the emission bandwidth of the fundamental emission of the transmitter may be employed, provided that the measured power is integrated over the full required measurement bandwidth.[389] We seek comment on whether we should apply this measurement methodology in this band; and if so, whether the 1 MHz resolution bandwidth is appropriate. Alternatively, what resolution and frequency offset should be considered to define out-of-band emissions and spurious emissions?

127. We request that commenters proposing specific out-of-band emissions criteria or alternative methods of defining or measuring the out-of-band emissions provide technical analysis describing how the proposed radiated emission limits would mitigate the risk of harmful interference to operations by adjacent users. We also seek comment on protection of Federal operations in adjacent bands in section V.D.7 below (Protection of Federal Operations).

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[386] *Spectrum Frontiers 1st R&O and FNPRM*, 31 FCC Rcd at 8117, para. 297 (discussing OOBE measurement challenges in the mmW band).

[387] *See* Ericsson Comments at 7.

[388] *See, e.g.*, 47 CFR § 27.53(a)(5).

[389] *Id.*

3. Field Strength Limits/Market Boundaries

128. The Commission's rules for mobile services typically define field strength limits at the market boundaries in order to prevent interference or facilitate coordination between licensees in adjacent markets. For example, the part 27 rules for the Advanced Wireless Services (AWS) specify that the predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed 47 dBμV/m unless the adjacent affected service area licensee(s) agree(s) to a different field strength.[390] The part 30 rules for Upper Microwave Flexible Use Service (UMFUS) specify that the predicted or measured Power Flux Density (PFD) from any Base Station operating in the 27.5-28.35 GHz band, 37-38.6 GHz band, and 38.6-40 GHz bands at any location on the geographical border of a licensee's service area shall not exceed −77.6 dBm/m2/MHz (measured at 1.5 meters above ground) unless the adjacent affected service area licensee(s) agree(s) to a different PFD.[391] The part 101 rules for the Multipoint Video and Data Distribution Service (MVDDS) in the 12.2-12.7 GHz band, directly adjacent to the band under consideration here, simply specify that licensees must coordinate their operations whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area.[392] While none of the commenters in response to the *12.7 NOI* suggested specific criteria for field strength limits at the market boundaries, several commenters do support an exclusive market-based licensing framework.[393]

129. In section V.C above (Licensing and Operating Rules) of this *NPRM,* we propose to establish a framework for licensing this band using exclusive market based licenses with 100 or 50 megahertz channel blocks. Since we propose to license geographic areas on an exclusive basis we also propose to establish PFD limits at the market boundaries, consistent with the approach the Commission has used in the past for similar market-based services. We believe that some criteria are necessary at market boundaries to manage interference and coordination between adjacent area licensees. We also believe that given the wide channel bandwidths and diversity of potential applications that might be deployed in these bands, any criteria that we propose should include a scaling factor for the bandwidth. In the Spectrum Frontiers proceeding the Commission adopted a PFD of −77.6 dBm/m2/MHz (measured at 1.5 meters above ground).[394] We believe that deployments in this band are likely to use directional antennas that have characteristics more similar to those in the UMFUS bands than those in the PCS and AWS bands. Therefore, we propose to adopt a requirement that the predicted or measured Power Flux Density (PFD) from any Base Station operating in the 12.7 GHz band at any location on the geographical border of a licensee's service area shall not exceed −77.6 dBm/m2/MHz (measured at 1.5 meters above ground) unless the adjacent affected service area licensee(s) agree(s) to a different PFD. We seek comment on this proposal. We seek comment on whether a PFD at the market boundary is the appropriate metric for this band or whether there are advantages to using a different metric, such as a field strength limit, which is used for other mobile services under part 27? Is the specific PFD value we propose appropriate for this frequency band taking into consideration factors like the typical receive antenna gain and receiver characteristics? Would simple coordination criteria, such as those currently in place for the MVDDS services in the 12.2-12.7 GHz band, which require coordination for any facility that has optical line of sight to an adjacent market be more appropriate? Given the potential flexible uses of the band, would it be appropriate to have different interference protection and/or coordination criteria

[390] *See* 47 CFR § 27.55(a)(1).

[391] *See* 47 CFR § 30.204(a).

[392] *See* 47 CFR § 101.1421(c).

[393] *See* CCA Reply at 4; AT&T Comments at 4; CTIA Comments at 2, 6; Ericsson Comments at 2.

[394] *See Spectrum Frontiers 1st R&O and FNPRM*, 31 FCC Rcd at 8124, para. 312. We note that the final rule adopted by the *Spectrum Frontiers 1st R&O and FNPRM* listed the incorrect value of –76 dBm/m2/MHz as opposed to the –77.6 dBm/m2/MHz value referenced in the discussion of the item. For clarity, in the instant *12.7 GHz NPRM*, we are proposing the -77.6 dBm/m2/MHz value.

depending on the types of services (e.g., fixed or mobile) that a licensee deploys? Commenters who propose alternative metrics or criteria or for controlling interference or facilitating coordination between licensees in adjacent markets or adjacent channels within the same market should describe their proposal in detail and support their proposal with engineering analysis.

4. Antenna Height Limits

130. We propose not to adopt limits on base station antenna height at this time because no commenters address the issue in response to the *12.7 NOI*. We seek comment on this proposal. Considering what future wireless networks are envisioned to be, are antenna height thresholds and corresponding power reductions applicable to certain part 27 bands[395] appropriate for base or fixed stations that will be used in the 12.7 GHz band to provide mobile broadband or for other expanded uses? Conversely, given the are proposing to control interference at license boundaries, are separate antenna height restrictions and corresponding power reductions even necessary? We tentatively propose not to adopt antenna height and power limits similar to those in our part 27 rules for certain bands. However, we seek comment on whether power limits based on antenna height are necessary and/or whether any modifications should be made to either the height thresholds or the power limits at specific heights that we have proposed. We also seek comment on whether there would there be any benefit in requiring antenna downtilt for antennas above a certain height? We seek comment on this proposal, including the costs and benefits of the proposal and any alternatives. For alternative proposals, commenters should provide technical support.

5. Canada and Mexico Coordination

131. Typically, the Commission's rules provide that fixed and mobile operations are subject to international agreements with Mexico and Canada.[396] We propose to apply the same limitation to the newly established rules for the 12.7-13.25 GHz band. Until such time as any adjusted agreements between the United States, Mexico, and/or Canada can be agreed to, operations in the 12.7-13.25 GHz band must not cause harmful interference across any of our international borders, consistent with the terms of the agreements currently in force.[397] Currently, fixed use of the 12.7-13.25 GHz band is covered by an existing arrangement between the United States and Canada.[398] We note that further modification of the proposed rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of this band. We seek comment on this issue, including the costs and benefits of alternatives.

6. General Part 27 Rules

132. There are several additional technical rules applicable to all part 27 services, including sections 27.51 (equipment authorization), 27.52 (RF safety), 27.54 (frequency stability), 27.56 (antennas structures; air navigation safety), and 27.63 (disturbance of AM broadcast station antenna patterns).[399] Given that we propose to designate mobile broadband and other expanded uses of the 12.7 GHz band as part 27 services, we propose to apply these general part 27 rules to all 12.7 GHz band licenses. Further, we propose to apply these rules to licensees that acquire their licenses through partitioning or disaggregation (to the extent the service rules permit such aggregation). We seek comment on our

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[395] *See, e.g.,* 47 CFR § 27.50(b)(1)-(5), (c)(1)-(4) (power and antenna height limits set forth in Tables 1-4 of § 27.50 applicable to certain 600 MHz, 700 MHz, and 800 MHz bands), (c)(1)-(4).

[396] *See e.g.*, 47 CFR §§ 27.57, 30.206, 101.147(r)(13), 101.509(d).

[397] *See* Agreement Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles per Second, Ca.-U.S., Oct 24, 1962 13 UST 2418, https://transition.fcc.gov/ib/sand/agree/files/can-nb/above30.pdf.

[398] *See* Agreement Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles per Second, Ca.-U.S., Oct 24, 1962 13 UST 2418, https://transition.fcc.gov/ib/sand/agree/files/can-nb/above30.pdf.

[399] *See, e.g.*, 47 CFR §§ 27.51, 27.52, 27.54, 27.56, 27.63.

proposals, including specific costs and benefits, and ask commenters to identify any aspects of our general part 27 rules that should be modified to accommodate the particular characteristics of the 12.7 GHz band.

7. Protection of Federal Operations

a. In-Band

133. Federal operations in the 12.7-13.25 GHz band include the Space Research Service (SRS) (space-to-Earth) and the use of commercial satellites in the Fixed Satellite Service (Earth-to-space). NTIA filed comments in response to the *12.7 NOI* raising concerns about interference to SRS operations at Goldstone, CA ground stations and other federal systems.[400]

134. With respect to Goldstone, NTIA has expressed concern that ground stations maybe susceptible to interference from commercial network base stations and handheld mobile stations.[401] Per footnote US251 of the Table of Allocation, the 12.75-13.25 GHz band 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).[402] Goldstone is one of three ground station complexes around the world known as the National Aeronautics and Space Administration (NASA)'s Deep Space Network (DSN) established for commanding, tracking and monitoring the health and safety of spacecraft at many distant planetary locales. The DSN is also used to conduct powerful science investigations that examine the nature of asteroids and the interiors of planets and moons.[403]

135. Additionally, NTIA raised concerns about possible aggregate interference from a large population of terrestrial emitters to current and future commercial satellite receivers used by the DoD.[404] In light of this, NTIA suggested that the Commission consider a compatibility analysis between mobile broadband service and commercial GSO and NGSO satellites.[405]

136. NTIA also raised concerns about possible interference to NASA and NSF passive radio astronomy observatories operating in the 12.7 GHz band.[406] The sites at issue include very long baseline interferometry (VLBI) stations for geodesy and astrometry high accuracy reference frames.[407] In its comments, NTIA notes that current coordination requirements exist for Green Bank Telescope within the National Radio Quiet Zone (NRQZ) for ground-based transmitters and that repurposing the 12.7 GHz band to allow terrestrial mobile broadband or other expanded use may require additional coordination zones and/or new coordination agreements and updated NRQZ coordination requirements with the changes beneficial for other U.S. radio astronomy observatories.[408]

137. Recognizing the importance of these Federal operations in the band, and the need to protect them from interference, we seek comment on establishing coordination zone and/or other criteria to protect Goldstone ground stations from possible harmful interference that might be caused by mobile

[400] *See* NTIA Comments at 2.

[401] NTIA Comments at 2.

[402] *See supra* note 210 and accompanying text.

[403] For details, *see 12.7 NOI* at *3, para. 6 and NASA, *What is the Deep Space Network* (Mar. 30, 2020) (NASA's Deep Space Network "is the largest and most sensitive scientific telecommunications system in the world."), https://www.nasa.gov/directorates/heo/scan/services/networks/deep_space_network/about.

[404] NTIA Comments at 2.

[405] NTIA Comments at 2.

[406] NTIA Comments at 2.

[407] NTIA Comments at 2.

[408] NTIA Comments at 2-3.

broadband or other expanded use intended for the 12.7-13.25 GHz band. We seek comment on how to define such a coordination zone and on what interference protection levels should apply at the edge of the coordination zone. We note that to protect Goldstone site, section 30.205 of the commission rules defines two coordination zones with contours 'coordinates tables corresponding to 60 dBm/100 MHz EIRP and 75 dBm/100 MHz EIRP respectively. Under section 30.205, all licensees in the 37-38 GHz band located in the coordination zone must coordinate with Federal Space Research Service (space to Earth) users of the band via the NTIA. All licensees within the zone defined by the 60 dBm/100 MHz EIRP must coordinate all operations; licensees operating within the area between the zones defined by the 60 dBm/100 MHz and 75 dBm/100 MHz EIRP must coordinate all operations if their base station EIRP is greater than 60 dBm/100 MHz or if their antenna height exceeds 100 meters above ground level; licensees operating outside the zones defined by the 75 dBm/100 MHz EIRP coordinates are not required to coordinate their operations with NTIA. Could a similar approach, based on a coordination agreement with NASA, be adopted for mobile broadband to ensure protection of the DSN?

b. Adjacent Band

138. Federal operations adjacent to the 12.7-13.25 GHz band include both military and scientific operations in the upper adjacent-band, 13.25-13.75 GHz. This band can be divided into two sub bands, the 13.25-13.4 GHz band and the 13.4-13.75 GHz band, each with different federal allocations. The 13.25-13.4 GHz portion is allocated on a secondary basis for federal Earth exploration satellite services (EESS) (active), space research services (SRS) (active), and on a primary basis for aeronautical radionavigation services (ARNS).[409] The 13.25-13.4 GHz portion is allocated for federal EESS (active), SRS (active), and radiolocation services on a primary basis and standard frequency and time signal-satellite (Earth-to-space) on a secondary basis.[410]

139. In response to the *12.7 NOI*, NTIA articulated several concerns related to adjacent band federal operations.[411] First, NTIA noted that the 13.25-13.4 GHz band is used by the Department of Defense (DoD) and the Federal Aviation Administration (FAA) to operate airborne Doppler navigation radar systems used to determine ground speed and drift angle of an aircraft with respect to the ground.[412] NTIA believes those operations may be susceptible to performance degradation due to interference coming from 12.7-13.25 GHz.[413] Future Unmanned aircraft detect-and-avoid safety systems being developed in this band are also a source of concern for the NTIA.[414] Although Recommendation ITU-R M.2008-1 provides characteristics and protection criteria for the 13.25-13.4 GHz band used for airborne Doppler radars,[415] NTIA believes that adjacent-band compatibility studies with representative commercial deployments may be necessary to update Recommendation ITU-R M.2008-1 to reflect the characteristics of current and future airborne Doppler navigation radars airborne.[416]

140. NTIA also noted that the 13.4-13.75 GHz band is used for DoD operations of shipborne radars (search radars, tracking radars, and missile and gun fire-control radars), the National Oceanic and Atmospheric Administration (NOAA) satellite operations in the Joint Satellite Oceanography Network (JASON), NASA's active remote sensing (including the future Surface Water and Ocean Topography (SWOT) mission), Global Precipitation Mission (GPM) and Tracking and Data Relay Satellite (TDRS)

[409] NTIA Comments at 3.

[410] NTIA Comments at 3.

[230] NTIA Comments at 3-5.

[412] NTIA Comments at 4.

[413] NTIA Comments at 4.

[414] NTIA Comments at 4.

[415] NTIA Comments at 4.

[416] NTIA Comments at 4.

operations, and the NSF continuum and spectral-line research (including as a calibration aid for the radionavigation satellite service) operations.[417] NTIA is concerned that aggregate interference from mobile base stations and ubiquitous handheld units may cause interference to NASA and NOAA's satellite systems.[418] Mobile broadband operations are also believed to be possible source of interference to military agencies radar systems.[419] NTIA suggests that adjacent-band compatibility studies with representative commercial deployments are necessary to assess any possible degradation of federal operations in the 13.4-13.75 GHz band.[420]

141. We note that NTIA has set up a Technical Interchange Group (TIG) as a tool for implementation of electromagnetic Compatibility (EMC) studies between 12.7-13.25 GHz band mobile broadband or other expanded use and federal systems.[421] NTIA TIG recommendations can be submitted in the record for the NPRM to help inform the decisions in the Report and Order (R&O). In section V.D.2 above (Out-of-Band Emissions (OOBE) Limits), we propose to establish an out-of-band emissions limit of -13dBm/1MHz anywhere outside a licensee spectrum block and seek comment on that proposal. In this section we seek comment on whether that same out-of-band emission limit is adequate to protect Federal operations in the adjacent bands. If the Commission relocates mobile BAS/CARS operations into a portion of the 12.7-13.25 GHz band, could creating a buffer between base/mobile operations and Federal operations alleviate some of the Federal concerns about interference? Recognizing the importance of Federal operations in adjacent bands, we seek comment generally on how to protect federal operations in bands adjacent to the 12.7-13.25 GHz band.

E. Promoting Digital Equity and Inclusion

142. The Commission, as part of its continuing effort to advance digital equity for all,[422] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[423] 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.

VI. ORDER IN GN DOCKET NO. 22-352

143. In the *12.7 NOI,* the Commission noted that to the extent it considers relocation of incumbents, or even future sharing between incumbents and new entrants, it will be important to have

[417] NTIA Comments at 5.

[418] NTIA Comments at 5.

[419] NTIA comments at 5.

[420] NTIA Comments at 5.

[421] NTIA Comments at 5-6.

[422] 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.

[423] 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).

clear information about the nature and density of incumbent use.[424] Accordingly, the Commission sought comment on whether to require incumbents in the 12.7 GHz band to submit information detailing their current use of the band, and if so, what such information it should require to be submitted.[425]

144. Several commenters urge us to require incumbents to confirm that they are actually operating in the band and to provide detailed information about their operations including transmitter and receiver characteristics.[426] For the 23 uplink Earth stations authorized in the band, and for the fixed point-to-point links authorized under parts 78 and 101, the operator or licensee must file a separate renewal application for each authorization.[427] All of the fixed links under part 101, however, were first authorized relatively recently (2017 or later) and typically consist of paired transmitters and receivers providing a communications link between two fixed locations. By contrast, many of the BAS and CARS incumbents were first authorized decades ago to use channels throughout the 12.7 GHz band over geographic areas for operations typically consisting of a collection of receive sites, mobile equipment, and control equipment,[428] which heightens the need to ensure that these authorizations in ULS and COALS still accurately reflect current operations.

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[424] *12.7 NOI* at *9, para. 25.

[425] *Id*. (citing Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352, at 3 (filed Oct. 20, 2022)).

[426] *See, e.g.*, AT&T Comments at 4 (asserting that to rationally assess how to protect non-Federal incumbents' operations, the Commission should require them to provide detailed "technical and operational data about their services, including transmitter and receiver characteristics"); Ericsson Comments at 12 ("Ericsson supports the Commission seeking information on incumbent use in the band to help assess how it can optimize the introduction of mobile broadband in the 12.7 GHz band"); NCTA Comments at 12 ("NCTA applauds the Commission's collection of more detailed and up-to-date information regarding incumbents to help facilitate consideration of 'sharing between incumbents and new entrants'") (quoting *12.7 NOI* at *9, para. 25); Nokia Comments at 3 (urging the Commission to "require incumbents in the 12.7 GHz band to provide relevant and accurate data" and to use that data to conduct an "in-depth evaluation of the sharing or coexistence conditions for the different incumbent uses in the band" to determine more conclusively "which incumbent services could share the band with mobile broadband, and which incumbent services should be relocated."); Qualcomm Comments at 9 (contending that "licensing records .... do not fully reflect actual use or the intensity of that use" and that "[a]ccurate and updated data on the uses of the band are instrumental" to evaluating possible expanded uses and encouraging the Commission to ask incumbent licensees to (1) "confirm whether they are actually operating on the frequency band"; (2) "provide data about their operations", and (3) provide "the actual technical parameters of such operations."); T-Mobile Comments at 8 (stating that as part of relocating incumbents, the Commission could "require incumbent licensees to provide information about their operations, including certifying to their use, to ensure the accuracy of cost estimates related to their systems."); Verizon Comments at 10 (stating that the Commission "should collect information about how much spectrum incumbent operators use to support their services, the breadth of geographic use by licensees," and "should also establish a deadline for operators to provide this information so that stakeholders may be on notice regarding further action in this proceeding."); Letter from Sarah Leggin, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-352, at 2 (filed May 5, 2023) (urging the Commission to require CARS licensees to certify that the COALS database accurately reflects current operations in the 12.7 GHz band).

[427] *See* 47 CFR §§ 25.121(b)), 78.15(a), 78.29, § 101.5; *see also id.* § 1.949. For the 12.7 GHz band incumbents licensed under part 74, however, most BAS authorizations are associated with a parent broadcast license and renewed automatically upon renewal of the parent broadcast license. *See* 47 CFR § 74.15(b),(e). Although this streamlined process reduces paperwork burdens and avoids termination for non-renewal of BAS authorizations that support ongoing broadcast operations, it may also increase the probability of inaccurate licensing and operational data in the Commission' records.

[428] *See. e.g., Improving Public Safety Communications in the 800 MHz Band,* WT Docket 02-55, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 4393, 4408 para 44 (2008); *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 00-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004).

145. Accordingly, to improve the data that the public and the Commission have to make informed comments and decisions about the proposals discussed in the *Notice of Proposed Rulemaking* above, we direct fixed and mobile BAS and CARS licensees under parts 74 and 78, to certify the accuracy of all information reflected on each license that includes authority to operate in the 12.7 GHz band, including whether the facilities are operating as authorized. If a licensee is unable to make such a certification for a given license, it must cancel or modify the license in accordance with the Commission's rules.[429] We exempt from this *Order* BAS and CARS licensees that have filed separate applications, on or after January 1, 2021, for new or modified licenses in the 12.7 GHz band. We note that for purposes of implementing the Paperwork Reduction Act of 1995 (PRA), these certifications are not "information" collections that require approval from the Office of Management and Budget (OMB).[430] We direct the Wireless Telecommunications Bureau, in coordination with the Media Bureau, to issue a Public Notice that will: (1) provide detailed instructions for BAS and CARS licensees to file certifications regarding existing information in ULS and COALS, respectively; and (2) establish a window for the filing of certifications. We also direct the Bureaus, in coordination with the Office of Economics and Analytics, to consider whether additional information should be collected from some or all 12.7 GHz band incumbents to seek comment regarding the need to initiate an information collection if such additional information is necessary to supplement the information submitted in this proceeding, and to comply with all requirements associated with any such information collection under the PRA.[431]

146. We acknowledge that several comments recommend also seeking information from all incumbent licensees in the 12.7 GHz band, as well as in the bands adjacent to the 12.7 GHz band.[432] As noted above, the Commission's rules require all in-band incumbents to operate in accordance with their authorizations. In the *Notice of Proposed Rulemaking* above, we specifically seek detailed information on the receiver, antenna, and operational characteristics for services operating in the adjacent bands from incumbents in adjacent bands, including DBS, NGSO FSS, MVDDS, active spaceborne sensors, and ARNS, that contend that provisions beyond the existing 12.7 GHz band fixed service protection levels for adjacent bands would be necessary for mobile broadband or other expanded-use operations in the 12.7 GHz band to prevent harmful interference to operations in those adjacent bands.[433]

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[429] 47 CFR §§ 74.600-74.690. Based on ULS data, 12.7 GHz band BAS licenses for the following radio service codes (followed by the approximate number of such licenses in parentheses) are subject to this certification requirement: Aural Intercity Relay (1), TV Intercity Relay (1179), TV Pickup (403), TV Studio-Transmitter Link (485), TV Translator Relay (32).

[430] *See* 5 CFR § 1320.3(h)(1) (defining "information" as not generally including certifications); *accord*, 84 FR 22733, 22734, n.12 (May 20, 2019) (concluding that the certification requirement for Earth station incumbents in the 3.7-4.2 GHz band was not considered "information" for purposes of the Paperwork Reduction Act (citing 5 CFR § 1320.3(h)(1)); Notice of Office of Management and Budget Action, ICR Ref. No. 201811–3060–018 (Jan. 28, 2019), available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201811-3060-018; Federal Communications Commission, Expanding Flexible Use of the 3.7 to 4.2 GHz Band, 84 FR 13141, Apr. 4, 2019.

[431] While the Commission has discretion to seek comment before undertaking an information collection, it has never taken the position that such comment, other than the comment sought as part of the PRA process, is a necessary prerequisite. Because the information collection adopted here is designed solely to obtain the information necessary to evaluate whether to adopt future Commission rules, it has no direct "future effect" and as such is not a rule requiring notice under the APA. *See* 5 U.S.C. § 551(4).

[432] *See, e.g.*, Nokia Comments at 8 (contending that "the Commission should require incumbents in the … lower and upper adjacent bands to provide relevant and accurate information about their deployments and receiver characteristics"); Verizon Comments at 10 (quoting *12.7 NOI* at *14, para. 40) (stating that the Commission "should collect information on 'detailed information on the receiver, antenna, and operational characteristics for services operating in the adjacent bands.'").

[433] *See supra* para. 121.

147. Although we do not require incumbents to provide additional information on their existing operations at this time, we propose in the *Notice of Proposed Rulemaking* above to protect only those BAS and CARS stations licensed in ULS and COALS, respectively, for which the licensee timely files the certification required in this *Order* (to the extent they have not filed a new or modification application in ULS or COALS for the station on or after January 1, 2021) and to protect FS incumbents based on licensing data. For the 23 incumbent Earth stations in the band, we also propose in the *Notice of Proposed Rulemaking* to use IBFS data in defining the scope of the grandfathered status of these stations. Because the Commission may use these data to inform its deliberations regarding the future use of the 12.7 GHz band, including possible interference avoidance coordination or relocation of facilities, or grandfathered status that could require future licensees to accept harmful interference from existing operations, we encourage all licensees to timely submit their data and to update their information in the event of a change in any of the operational parameters.

VII. PROCEDURAL MATTERS

A. Ex Parte Presentations

148. These proceedings shall be treated as "permit-but-disclose" proceedings in accordance with the Commission's *ex parte* rules.[434] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Period and Filing Procedures

149. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. For comments regarding the 12.2 GHz *Further Notice*, comments must be filed in WT Docket No. 20-443. For comments regarding the 12.7 *Notice*, comments must be filed in GN Docket No. 22-352. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.

[434] 47 CFR § 1.1200 *et seq.*

- 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.[435]
  - After COVID-19 restrictions are lifted, the Commission has established that hand-carried documents are to be filed at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701. This will be the only location where hand-carried paper filings for the Commission will be accepted.[436]

- 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.

C. People with Disabilities

150. 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).

D. Regulatory Flexibility Act

151. The Regulatory Flexibility Act of 1980, as amended (RFA),[437] 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."[438] In the *Report and Order*, the Commission declines to adopt rule changes and, therefore a Final Regulatory Flexibility Analysis has not been performed. The Commission seeks comment on potential rule and policy changes contained in the *Further Notice of Proposed Rulemaking* (*Further Notice*), and accordingly, has prepared an Initial Regulatory Flexibility Analysis (IRFA) The IRFA for Docket 20-443 is set forth in the Appendix B. The Commission has also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking* (*Notice*) in Docket 22-352. This IRFA is set forth in Appendix C. Written public comments are requested on both IRFAs. Comments must be filed by the deadlines for comments on the *Further Notice* and *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA. We remind commenters to file in the appropriate docket: WT Docket No. 20-443 for the *Further Notice*, and GN Docket No. 22-352 for the *Notice*.

E. Paperwork Reduction Act

152. The *Further Notice of Proposed Rulemaking* in WT Docket No. 20-443 and the *Notice of Proposed Rulemaking* in GN Docket No. 22-352 may contain proposed modified information collection

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

[436] *See Amendment of the Commission's Rules of Practice and Procedure*, Order, DA 20-562 (OMD 2020).

[437] 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).

[438] 5 U.S.C. §§ 603, 605(b).

requirements. Therefore, we seek comment on potential new or revised information collections subject to the Paperwork Reduction Act of 1995. 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 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.

153. The *Order* in GN Docket No. 22-352 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, the *Order* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

F. Congressional Review Act

154. The Commission will not send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C 801(a)(1)(A), because it does not adopt any rule as defined in the Congressional Review Act, 5 U.S.C. 804(3).

G. Further Information

155. For additional information on this proceeding, contact Madelaine Maior of the Wireless Telecommunications Bureau, Broadband Division, at madelaine.maior@fcc.gov or 202-418-1466; Simon Banyai of the Wireless Telecommunications Bureau, at simon.banyai@fcc.gov or (202) 418-1443;or Nick Oros of the Office of Engineering and Technology, at nicholas.oros@fcc.gov or (202) 418-2099.

VIII. ORDERING CLAUSES

156. IT IS ORDERED that, pursuant to sections 1, 2, 4, 5, 301, 302, 303, 304, 307, 309, 310, and 316 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154, 155, 301, 302a, 303, 304, 307, 309, 310, 316, and section 1.411 of the Commission's rules, 47 CFR § 1.411, this Report and Order and Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking and Order in the captioned dockets IS ADOPTED.

157. The inquiry in *Expanding Flexible Use in Mid-Band Spectrum Between 3.7-24 GHz*, GN Docket No. 17-183, is TERMINATED as to the mid-band spectrum between 12.2 GHz and 13.25 GHz.

158. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking in WT Docket No. 20-443 and the Notice of Proposed Rulemaking in GN Docket No. 22-352 on or before the number of days shown on the first page of this document after publication in the Federal Register, and reply comments on or before the number of days shown on the first page of this document after publication in the Federal Register.

159. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking and Order, including the associated Supplemental Initial Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules in GN Docket No. 22-352

The Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 25, 27, 74, 78, and 101, as follows:

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.907 by revising the definition of "Covered geographic licenses" to read as follows:

§ 1.907 Definitions.

* * * * *

Covered geographic licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G of this chapter); 218-219 MHz Service (part 95, subpart F, of this chapter); 220-222 MHz Service, excluding public safety licenses (part 90, subpart T, of this chapter); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Broadband Service (part 27, subpart P); 3.45 GHz Service (part 27, subpart Q); 3.7 GHz Service (part 27, subpart O); Advanced Wireless Services (part 27, subparts K and L); 12.7 GHz Service (part 27, subpart R); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G, of this chapter); Broadband Personal Communications Service (part 24, subpart E, of this chapter); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Citizens Broadband Radio Service (part 96, subpart C, of this chapter); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); Educational Broadband Service (part 27, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J, of this chapter); Upper Microwave Flexible Use Service (part 30 of this chapter); and Wireless Communications Service (part 27, subpart D of this chapter).

3. Amend § 1.9005 by:

a. Removing the word "and" at the end of paragraph (nn);
b. Removing the period at the end of paragraph (pp) and adding and "; and" in its place; and
c. Adding paragraph (qq) to read as follows:

§ 1.9005 Included services.

* * * * *

(qq) The 12.7 GHz Service in the 12.7-13.25 GHz band (part 27 of this chapter).

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

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

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

5. Amend § 2.106, the Table of Frequency Allocations, as follows:

a. Revise page 49 to read as follows:

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
11.2-11.45 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 (Earth-to-space) 5.484 MOBILE except aeronautical mobile	11.2-11.45 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE except aeronautical mobile		(See previous page)		
11.45-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B (Earth-to-space) 5.484 MOBILE except aeronautical mobile	11.45-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B MOBILE except aeronautical mobile				
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.488 Mobile except aeronautical mobile 5.485	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	11.7-12.2	11.7-12.2 FIXED-SATELLITE (space-to-Earth) 5.485 5.488 NG143 NG527A	Satellite Communications (25)
	12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B 5.488 5.485 5.489	5.487 5.487A			
5.487 5.487A	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492 5.487A 5.488 5.490	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) 5.484B MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	12.2-12.75	12.2-12.7 FIXED BROADCASTING-SATELLITE 5.487A 5.488 5.490	Satellite Communications (25) Fixed Microwave (101)
12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B (Earth-to-space) 5.494 5.495 5.496	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.484B MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493		12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE NG53 NG57	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE US251 NG53 NG57	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A 5.499			13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	13.25-13.4 AERONAUTICAL RADIONAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)

b. In the list of Non-Federal Government (NG) Footnotes, revise footnotes NG52, NG53, NG57, and NG118 to read as follows:

NG52-Except as provided for by NG527A, use of the band 10.7-11.7 GHz (space-to-Earth) by geostationary satellites in the fixed-satellite service shall be limited to international systems, *i.e.,* other than domestic systems.

NG53 The mobile BAS/CARS repack band(s) is reserved for eligible incumbent television pickup (TVPU) and cable television relay service (CARS) pickup stations (collectively, mobile BAS/CARS) that were licensed to operate in the 12.7-13.25 GHz band pursuant to applications filed before September 19, 2022.

NG57- In the band 12.7-13.25 GHz, the following provisions shall apply:

(a) Except as provided in NG53 and in the paragraphs below, the band is designated for emerging technologies under part 27 of this chapter.

(b) *Fixed Satellite Service incumbents*. Any Fixed Satellite Service space station or earth station authorized to serve or operate in the United States in accordance with the Table of Allocations based on a petition for market access or application filed before September 19, 2022, may continue such Earth-to-space operations on a primary basis. For such incumbent Fixed Satellite Service stations, the use of the band 12.75-13.25 GHz by geostationary satellites is limited to international systems, i.e., other than domestic systems; non-geostationary-satellite systems are limited to communications with individually licensed incumbent earth stations. 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.

(1) On or after September 19, 2022, petitions for market access or applications for new or modified Fixed Satellite Service space stations and earth stations are unacceptable for filing and shall be dismissed, with the following exceptions:

(i) *Space stations*. Applications for space stations limited to serving earth stations outside the United States, applications for modification of existing space station authorizations, see § 25.117 of this chapter, applications to relocate existing space stations pursuant to the Commission's fleet management policy, see 25.118(e) of this chapter, and applications for replacement space stations.

(ii) *Earth stations*. Applications for renewal or cancellation of incumbent earth station authorizations, modifications to correct location or other data required in the incumbent earth station file, and modifications not requiring prior Commission authorization, see § 25.118(a)-(b) of this chapter.

(c) *Fixed Service and Mobile Service incumbents*. Licensees of Fixed Service or Mobile Service authorized based on an application filed before September 19, 2022, pursuant to parts 74, 78, or 101 of this chapter may continue to operate as authorized until the applicable sunset date.

(1) On or after September 19, 2022, applications for new or modified Fixed Service or Mobile Service operations under parts 74, 78, and 101 are unacceptable for filing and shall be dismissed, with the following exceptions:

(i) *Mobile BAS/CARS repack.* Applications for modification by incumbent mobile BAS/CARS licensees to relocate to the mobile BAS/CARS repack band (see NG53).

(ii) *Other*: Applications for renewal, cancellation, or minor modification (if the incumbent licensee establishes that the modification would not add to any relocation costs).

NG118 In the bands 2025-2110 MHz~~,~~ and 6875-7125 MHz, 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.

PART 25 – SATELLITE COMMUNICATIONS

6. 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.

7. Amend § 25.115 to add "12.7-13.25 GHz" to the heading of paragraph (e), add paragraphs (e)(2) and (f)(4) as follows:

§ 25.115 Applications for earth station authorizations

* * * * *

(e) **GSO FSS earth stations in 12.7-13.25 GHz and 17.8–30 GHz**

(2) On or after September 19, 2022, applications for new or modified GSO FSS earth station licenses in the 12.7-13.25 GHz band are unacceptable for filing and shall be dismissed, with the exception of applications for renewal or cancellation of incumbent earth station authorizations, and modifications to correct location or other data required in the incumbent earth station file, and modifications not requiring prior Commission authorization, see § 25.118(a)-(b).

(f) *NGSO FSS earth stations in 10.7–30.0 GHz*

* * * * *

(4) On or after September 19, 2022, applications for new or modified earth station licenses in the 12.7-13.25 GHz band are unacceptable for filing and shall be dismissed, with the exception of applications for renewal or cancellation of incumbent earth station authorizations, and modifications to correct location or other data required in the incumbent earth station file, and modifications not requiring prior Commission authorization, see § 25.118(a)-(b).

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

8. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

9. Amend § 27.1 by adding paragraph (b)(18) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(18) 12.7–13.25 GHz.

* * * * *

10. Amend § 27.2 by adding paragraph (f) to read as follows:

§ 27.2 Permissible Communications.

* * * * *

(f) 12.7-13.25 GHz band. The 12.7-13.25 GHz frequencies may not be used for downlink satellite transmission.

* * * * *

11. Amend § 27.4 by adding in alphabetical or numerical order the definition for "12.7 GHz Service" to read as follows:

§ 27.4 Terms and definitions.

12.7 GHz Service. A radiocommunication service licensed under this part for the frequency bands specified in § 27.5(p) (12.7-13.25 GHz band).

* * * * *

12. Amend § 27.5 by adding paragraph (p) to read as follows:

§ 27.5 Frequencies.

* * * * *

(p) *12.7-13.25 GHz band*. The 12.7 GHz Service is licensed as five individual 100 megahertz blocks [and one smaller block depending on resolution of mobile BAS/CARS repack band] available for assignment on a Partial Economic Area basis, *see* § 27.6(o).

13. Amend § 27.6 by adding paragraph (o) to read as follows:

§ 27.6 Service areas.

* * * * *

(o) *12.7-13.25 GHz band.* Service areas in the 12.7 GHz Service are based on Partial Economic Areas (PEAs) as defined by appendix A to this subpart.

14. Amend § 27.11 by adding paragraph (n) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(n) *12.7-13.25 GHz band*. Authorizations for licenses in the 12.7 GHz Service will be based on Partial Economic Areas (PEAs), as specified in § 27.6(o), and the frequency blocks specified in § 27.5(p).

15. Amend § 27.13 by adding paragraph (p) to read as follows:

§ 27.13 License period.

* * * * *

(p) *12.7-13.25 GHz band*. Authorization for the band will have a term not to exceed ten (10) years from the date of issuance.

16. Amend § 27.14 by revising the first sentence of paragraphs (a) and (k), and adding paragraph (x) to read as follows:

§ 27.14 Construction requirements.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for the 600 MHz band, Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, Block C, C1 or C2 in the 746-757 MHz and 776-787 MHz bands, Block A in the 2305-2310 MHz and 2350-2355 MHz bands, Block B in the 2310-2315 MHz and 2355-2360 MHz bands, Block C in the 2315-2320 MHz band, Block D in the 2345-2350 MHz band, in the 3450-3550 MHz band, in the 3700-3980 MHz band, and in the 12.7-13.25 GHz band, and with the exception of licensees holding AWS authorizations in the 1915-1920 MHz and 1995-2000 MHz bands, the 2000-2020 MHz and 2180-2200 MHz bands, or 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz bands, must, as a performance requirement, make a showing of "substantial service" in their license area within the prescribed license term set forth in § 27.13. "Substantial service" is defined as service which is sound, favorable and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

(k) Licensees holding WCS or AWS authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), (q), (r), (s), (t), (v), (w), and (x) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission,

within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. The licensee must certify whether it has met the applicable performance requirements. The licensee must file a description and certification of the areas for which it is providing service. The construction notifications must include electronic coverage maps, supporting technical documentation and any other information as the Wireless Telecommunications Bureau may prescribe by public notice.

* * * * *

(x) The following provisions apply to any licensee holding an authorization in the 12.7-13.25 GHz band:

(1) Licensees relying on mobile or point-to-multipoint service shall provide reliable signal coverage and offer service within five (5) years from the date of the initial license to at least forty-five (45) percent of the population in each of its license areas ("First Buildout Requirement"). Licensee shall provide reliable signal coverage and offer service within ten (10) years from the date of the initial license to at least eighty (80) percent of the population in each of its license areas ("Second Buildout Requirement"). Licensees relying on point-to-point service shall demonstrate within five years of the license issue date that they have four links operating and providing service to customers or for internal use if the population within the license area is equal to or less than 268,000 and, if the population is greater than 268,000, that they have at least one link in operation and providing service to customers, or for internal use, per every 67,000 persons within a license area ("First Buildout Requirement"). Licensees relying on point-to-point service shall demonstrate within 10 years of the license issue date that they have eight links operating and providing service to customers or for internal use if the population within license area is equal to or less than 268,000 and, if the population within the license area is greater than 268,000, shall demonstrate they are providing service and have at least two links in operation per every 67,000 persons within a license area ("Second Buildout Requirement").

(2) In the alternative, a licensee offering Internet of Things-type services shall provide geographic area coverage within five (5) years from the date of the initial license to at least thirty-five (35) percent of the license ("First Buildout Requirement"). A licensee offering Internet of Things-type services shall provide geographic area coverage within ten (10) years from the date of the initial license to at least sixty-five (65) percent of the license ("Second Buildout Requirement").

(3) If a licensee fails to establish that it meets the First Buildout Requirement for a particular license area, the licensee's Second Buildout Requirement deadline and license term will be reduced by two years. If a licensee fails to establish that it meets the Second Buildout Requirement for a particular license area, its authorization for each license area in which it fails to meet the Second Buildout Requirement shall terminate automatically without Commission action, and the licensee will be ineligible to regain it if the Commission makes the license available at a later date.

(4) To demonstrate compliance with these performance requirements, licensees shall use the most recently available decennial U.S. Census Data at the time of measurement and shall base their measurements of population or geographic area served on areas no larger than the Census Tract level. The population or area within a specific Census Tract (or other acceptable identifier) will be deemed served by the licensee only if it provides reliable signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may include only the population or geographic area within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license. If a licensee does not provide reliable signal coverage to an entire license area, the license must provide a map that accurately depicts the boundaries of the area or areas within each license area not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the

propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

17. Amend § 27.50 by adding paragraph (l) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(l) The following power requirements apply to stations transmitting in the 12.7-13.25 GHz band:

(1) For fixed and base stations operating in connection with mobile systems, the average power of the sum of all antenna elements is limited to an equivalent isotopically radiated power (EIRP) density of +75dBm/100 MHz. For channel bandwidths less than 100 megahertz the EIRP must be reduced proportionally and linearly based on the bandwidth relative to 100 megahertz.

(2) For mobile stations, the average power of the sum of all antenna elements is limited to a maximum EIRP of +43 dBm.

(3) For transportable stations (transmitting equipment that is not intended to be used while in motion, but rather at stationary locations), the average power of the sum of all antenna elements is limited to a maximum EIRP of +55 dBm.

(4) Equipment employed must be authorized in accordance with the provisions of § 27.51. Power measurements for transmissions by stations authorized under this section may be made either in accordance with a Commission-approved average power technique or in compliance with paragraph (j)(5) of this section.

(5) Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, and any other relevant factors, so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

18. Amend § 27.53 by adding paragraph (p) to read as follows:

§ 27.53 Emission limits.

* * * * *

(p) *12.7 GHz Service*. The following emission limits apply to stations transmitting in the 12.7-13.25 GHz band:

(1) For base station operations in the 12.7-13.25 GHz band, the conducted power or the total radiated power of any emission outside the licensee's authorized bandwidth shall not exceed −13 dBm/MHz. Compliance with this paragraph (p)(1) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed.

(2) For mobile operations in the 12.7-13.25 GHz band, the conducted power or the total radiated power of any emission outside the licensee's authorized bandwidth shall not exceed −13 dBm/MHz. Compliance with this paragraph (p)(2) is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater.

19. Amend § 27.55 by adding paragraph (f) to read as follows:

§ 27.55 Power strength limits.

* * * * *

(f) *Power flux density for* stations *operating in the 12.7-13.25 GHz band.* For base and fixed stations operation in the 12.7-13.25 GHz band in accordance with the provisions of § 27.50(j), the power flux density (PFD) at any location on the geographical border of a licensee's service area shall not exceed −77.6 dBm/m^2/MHz. This power flux density will be measured at 1.5 meters above ground. Licensees in adjacent geographic areas may voluntarily agree to operate under a higher PFD at their common boundary.

20. Amend § 27.57 by revising paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1695-1710 MHz, 1710-1755 MHz, 1755-1780 MHz, 1915-1920 MHz, 1995-2000 MHz, 2000-2020 MHz, 2110-2155 MHz, 2155-2180 MHz, 2180-2200 MHz, 3450-3550 MHz, 3700-3980 MHz, and 12.7-13.25 GHz bands is subject to international agreements with Mexico and Canada.

21. Add new subpart R to read as follows:

Subpart R – 12.7 GHz Service (12.7-13.25 GHz)

RELOCATION OF INCUMBENT OPERATIONS IN THE 12.7-13.25 GHZ BAND

§ 27.1711 Relocation of fixed microwave services, broadcast auxiliary services, and cable television relay services in the 12.7-13.25 GHz band

Parts 27, 74, 78 and 101 of this chapter contain provisions governing the relocation of incumbent Fixed Microwave Services (FS) (see part 101), Broadcast Auxiliary Services (BAS) (see part 74), and Cable Television Relay Services (CARS) (see part 78) in the 12.7-13.25 GHz bands. The relocation of fixed microwave, BAS, and CARS are governed by parts 27 and 101. The relocation of mobile BAS and CARS licensees are governed, respectively, by §§ 74.690 and 78.40.

PROTECTION OF INCUMBENT OPERATIONS IN THE 12.7-13.25 GHZ BAND

§ 27.1712 Protection of fixed operations in the 12.7-13.25 GHz band under parts 74, 78 and 101.

All Emerging Technologies (ET) licensees, prior to initiating operations from any base or fixed station in the 12.7-13.25 GHz band, must coordinate their frequency usage with co-channel and adjacent-channel fixed incumbents. Coordination shall be conducted in accordance with the provisions of § 24.237 of this chapter.

§ 27.1713 Protection of federal government operations in the 12.7-13.25 GHz band

The band 12.75-13.25 GHz is allocated to the space research (deep space) (space-to-Earth) service for reception only at Goldstone, CA (35°20′ N, 116°53′ W). See § 2.106 note US251 of this chapter. The 12.7-13.25 GHz band includes a federal allocation for reception-only by a satellite ground station at the Goldstone Deep Space Communications Complex (Goldstone Observatory), operated by the National Aeronautics and Space Administration (NASA).

§ 27.1714 Interference to Emerging Technologies licensees in the 12.7-13.25 GHz band from Earth stations in the Fixed Satellite Service.

An ET licensee in the 12.7-13.25 GHz band must accept or protect itself from interference from earth stations that were authorized to transmit (Earth-to-space) in the band based on an application filed before September 19, 2022.

COST-SHARING POLICIES GOVERNING RELOCATION FROM THE 12.7-13.25 GHZ BAND

§ 27.1760 Cost-sharing requirements for Emerging Technologies in the 12.7-13.25 GHz Band.

Frequencies in the 12.7-13.25 GHz band have been reallocated from Fixed Microwave Services (FS) (see Part 101), Broadcast Auxiliary Services (BAS) (see Part 74), Cable Television Relay Services (CARS) (see Part 78), and Fixed Satellite Services (FSS) (see Part 25) to use by Emerging Technologies (ET) (as reflected in § 2.106 of this chapter). The relocation of fixed microwave links, including fixed BAS and CARS, are governed by Parts 27 and 101 and referred to as microwave licensee(s) in this section. The relocation of mobile BAS and CARS operations are governed, respectively, by Sections 74.690 and 78.40. ET entities are required to relocate an existing microwave licensee in these bands if interference to the existing microwave licensee would occur. All ET entities that benefit from the clearance of this spectrum by other ET entities or by a voluntarily relocating microwave incumbent must contribute to such relocation costs. ET entities may satisfy their reimbursement requirement by entering into private cost-sharing agreements or agreeing to terms other than those specified in § 27.1762. However, ET entities are required to reimburse other ET entities or voluntarily relocating microwave incumbents that incur relocation costs and are not parties to the alternative agreement. In addition, parties to a private cost-sharing agreement may seek reimbursement through the clearinghouse (as discussed in § 27.1761) from ET entities that are not parties to the agreement. The cost-sharing plan is in effect during all phases of the relocation. If an ET licensee enters into a spectrum leasing arrangement (as set forth in part 1, subpart X of this chapter) and the spectrum lessee triggers a cost-sharing obligation, the licensee is the ET entity responsible for satisfying the cost-sharing obligations under §§ 27.1760–27.1767.

§ 27.1761 Administration of the cost-sharing plan.

The Wireless Telecommunications Bureau, under delegated authority, will select one or more entities to operate as a neutral, not-for-profit clearinghouse(s). This clearinghouse(s) will administer the cost-sharing plan by, inter alia, determining the cost-sharing obligation of ET entities for the relocation of incumbents from the 12.7-13.25 GHz band. The clearinghouse filing requirements (see §§ 27.1763-27.1765) will not take effect until an administrator is selected.

§ 27.1762 The cost-sharing formula.

An ET relocator who relocates an interfering microwave link, i.e., one that is in all or part of its market area and in all or part of its frequency band or a voluntarily relocating microwave incumbent, is entitled to *pro rata* reimbursement based on the following formula:

$$RN = \frac{C}{N} \cdot \frac{[120 - (T_m)]}{120}$$

(a) *RN* equals the amount of reimbursement.

(b) *C* equals the actual cost of relocation. Actual relocation costs include, but are not limited to, such items as: Radio terminal equipment (TX and/or RX—antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; prior coordination notification under § 101.103(d) of this chapter; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; and leased facilities. Increased recurring costs represent part of the actual cost of relocation and, even if the compensation to the incumbent is in the form of a commitment to pay five years of charges, the ET relocator is entitled to seek immediate reimbursement of the lump sum amount

based on present value using current interest rates, provided it has entered into a legally binding agreement to pay the charges. *C* also includes voluntarily relocating incumbent's independent third-party appraisal of its compensable relocation costs and incumbent transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the "hard" costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. *C* may not exceed $125,000 per link, with an additional $150,000 permitted if a new or modified tower is required.

(c) *N* equals the number of ET entities that have triggered a cost-sharing obligation. For the ET relocator, $N = 1$. For the next ET entity triggering a cost-sharing obligation, $N = 2$, and so on. In the case of a voluntarily relocating incumbent, $N = 1$ for the first ET entity triggering a cost-sharing obligation. For the next ET entity triggering a cost-sharing obligation, $N = 2$, and so on.

(d) *Tm* equals the number of months that have elapsed between the month the ET relocator or voluntarily relocating incumbent obtains reimbursement rights for the link and the month in which an ET entity triggers a cost-sharing obligation. An ET relocator obtains reimbursement rights for the link on the date that it signs a relocation agreement with an incumbent. A voluntarily relocating incumbent obtains reimbursement rights for the link on the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to § 101.305 of the Commission's rules, if applicable, or § 1.953 (Discontinuance of service or operations) of this chapter.

§ 27.1763 Reimbursement under the Cost-Sharing Plan

(a) ***Registration of reimbursement rights***. Claims for reimbursement under the cost-sharing plan are limited to relocation expenses incurred on or after the date when the first ET license is issued in the relevant 12.7-13.25 GHz band (start date). If a clearinghouse is not selected by that date (see § 27.1764) claims for reimbursement (see § 27.1763) and notices of operation (see § 27.1765) for activities that occurred after the start date but prior to the clearinghouse selection must be submitted to the clearinghouse within 30 calendar days of the selection date.

(1) To obtain reimbursement, an ET relocator must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent. In the case of involuntary relocation, an ET relocator must submit documentation of the relocated system within 30 calendar days after the end of the relocation.

(2) To obtain reimbursement, a voluntarily relocating incumbent must submit documentation of the relocation of the link to the clearinghouse within 30 calendar days of the date that the incumbent notifies the Commission that it intends to discontinue, or has discontinued, the use of the link, pursuant to § 101.305 of the Commission's rules.

(b) ***Documentation of expenses***. Once relocation occurs, the ET relocator, or the voluntarily relocating incumbent, must submit documentation itemizing the amount spent for items specifically listed in § 27.1762(b), as well as any reimbursable items not specifically listed in § 27.1762(b) that are directly attributable to actual relocation costs. Specifically, the ET relocator, or the voluntarily relocating incumbent must submit, in the first instance, only the uniform cost data requested by the clearinghouse along with a copy, without redaction, of either the relocation agreement, if any, or the third party appraisal described in (b)(1) of this section, if relocation was undertaken by the microwave incumbent. ET relocators and voluntarily relocating incumbents must maintain documentation of cost-related issues until the applicable sunset date and provide such documentation upon request, to the clearinghouse, the Commission, or entrants that trigger a cost-sharing obligation. If an ET relocator pays an incumbent a monetary sum to relocate its own facilities, the ET relocator must estimate the costs associated with relocating the incumbent by itemizing the anticipated cost for items listed in § 27.1762(b). If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement.

(1) ***Third party appraisal***. A voluntarily relocating incumbent, must also submit an independent third party appraisal of its compensable relocation costs. The appraisal should be based on the actual cost

of replacing the incumbent's system with comparable facilities and should exclude the cost of any equipment upgrades or items outside the scope of § 27.1762(b).

(2) ***Identification of links***. The ET relocator or the voluntarily relocating incumbent must identify the particular link associated with appropriate expenses (i.e., costs may not be averaged over numerous links).

(c) ***Full Reimbursement***. An ET relocator who relocates a microwave link that is either fully outside its market area or its licensed frequency band may seek full reimbursement through the clearinghouse of compensable costs, up to the reimbursement cap as defined in § 27.1762(b). Such reimbursement will not be subject to depreciation under the cost-sharing formula.

(d) ***Good Faith Requirement***. New entrants and incumbent licensees are expected to act in good faith in satisfying the cost-sharing obligations under §§ 27.1760 through 27.1767. The requirement to act in good faith extends to, but is not limited to, the preparation and submission of the documentation required in paragraph (b) of this section.

(e) ***Reimbursement for Self-relocating Incumbents in the 12.7-13.25 GHz band***. Where a voluntarily relocating incumbent relocates its own links, it is entitled to reimbursement from the first ET beneficiary for its actual costs for relocating the links, subject to the reimbursement cap in § 27.1762(b). This amount is subject to depreciation as specified in § 27.1762(b). An ET licensee who is obligated to reimburse relocation costs under this rule is entitled to obtain reimbursement from other ET beneficiaries in accordance with §§ 27.1762 and 27.1764. For purposes of applying the cost-sharing formula relative to other ET licensees that benefit from the self-relocation, depreciation shall run from the date on which the clearinghouse issues the notice of an obligation to reimburse the voluntarily relocating microwave incumbent.

§ 27.1764 Triggering a reimbursement obligation.

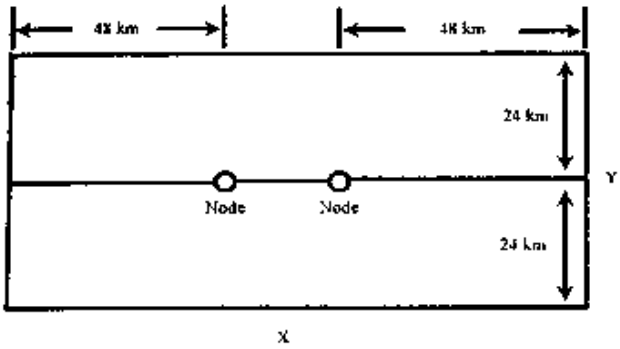
(a) The clearinghouse will apply the following test to determine when an ET entity has triggered a cost-sharing obligation and therefore must pay an ET relocator or a voluntarily relocating incumbent in accordance with the formula detailed in § 27.1762:

(1) All or part of the relocated microwave link was initially co-channel with the licensed ET band of the ET entity;

(2) An ET relocator or a voluntarily relocating incumbent has paid the relocation costs of the incumbent; and

(3) The ET entity is operating or preparing to turn on a fixed base station at commercial power and the fixed base station is located within a rectangle (Proximity Threshold) described as follows:

(i) The length of the rectangle shall be x where x is a line extending through both nodes of the microwave link to a distance of 48 kilometers (30 miles) beyond each node. The width of the rectangle shall be y where y is a line perpendicular to x and extending for a distance of 24 kilometers (15 miles) on both sides of x. Thus, the rectangle is represented as follows:



(ii) If the application of the Proximity Threshold Test indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the ET entity of the total amount of its reimbursement obligation.

(b) Once a reimbursement obligation is triggered, the ET entity may not avoid paying its cost-sharing obligation by deconstructing or modifying its facilities.

§ 27.1765 Payment issues.

Prior to initiating operations for a newly constructed site or modified existing site, an ET entity is required to file a notice containing site-specific data with the clearinghouse. The notice regarding the new or modified site must provide a detailed description of the proposed site's spectral frequency use and geographic location, including but not limited to the applicant's name and address, the name of the transmitting base station, the geographic coordinates corresponding to that base station, the frequencies and polarizations to be added, changed or deleted, and the emission designator. If a prior coordination notice (PCN) under § 101.103(d) of this chapter is prepared, ET entities can satisfy the site-data filing requirement by submitting a copy of their PCN to the clearinghouse. ET entities that file either a notice or a PCN have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse. Utilizing the site-specific data, the clearinghouse will determine if any reimbursement obligation exists and notify the ET entity in writing of its repayment obligation, if any. When the ET entity receives a written copy of such obligation, it must pay directly to the relocator the amount owed within 30 calendar days.

§ 27.1766 Dispute Resolution Under the Cost-Sharing Plan.

(a) Disputes arising out of the cost-sharing plan, such as disputes over the amount of reimbursement required, must be brought, in the first instance, to the clearinghouse for resolution. To the extent that disputes cannot be resolved by the clearinghouse, parties are encouraged to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques.

(b) ***Evidentiary requirement***. Parties of interest contesting the clearinghouse's determination of specific cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

§ 27.1767 Termination of cost-sharing obligations.

The cost-sharing plan will sunset for all ET entities on the same date on which the relocation obligation for the 12.7-13.25 GHz band terminates. ET entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

PART 74 - EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

22. The authority citation for Part 74 continues to read as follows:

47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

23. Modify § 74.602(a) and note 2 of the Table to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700-18,580 and 19,260-19,700 MHz are available for broadcast auxiliary stations as described in paragraph (g) of this section. The band segment 6425-6525 MHz is available for broadcast auxiliary stations as described in paragraph (i) of this section. The bands 6875-7125 MHz and 12700-13200 MHz are co-equally shared with stations licensed pursuant to Parts 78 and 101 of the Commission's Rules. Broadcast network-entities may also use the 1990-2110, 6425-6525 and 6875-7125 MHz bands for mobile television pickup only. On or after September 19, 2022, applications for new or modified stations in the 12.7-13.25 GHz band under parts 74, 78, and 101 are unacceptable for filing and shall be dismissed, except for applications of eligible incumbent television pickup (TVPU) and cable television relay service (CARS) pickup stations (collectively, mobile BAS/CARS) licensees to modify incumbent authorizations to the repacked mobile BAS/CARS sub-band.

* * * * *

[2] The mobile BAS/CARS repack band(s) is reserved for mobile BAS/CARS licensees that were licensed to operate in the 12.7-13.25 GHz band pursuant to applications filed before September 19, 2022 that timely certified such authorizations as required in accordance with the procedures set-forth in GN Docket No. 22-352.

24. Modify § 74.690(a)-(d) and add new (f) to read as follows:

§ 74.690 Transition of the 1990-2025 MHz and 12,700-13,250 MHz bands from the Broadcast Auxiliary Service to Emerging Technologies and Reimbursement and Cost-Sharing.

(a) New Entrants are collectively defined as those licensees proposing to use emerging technologies to implement Mobile Satellite Services in the 2000-2020 MHz band (MSS licensees), those licensees authorized after July 1, 2004 to implement new Fixed and Mobile services in the 1990-1995 MHz band, those licensees authorized after September 9, 2004 in the 1995-2000 MHz and 2020-2025 MHz bands, and those licensees authorized under part 27 after in the 12,700-13,250 MHz band. * * * New Entrants in the 12,700-13,250 MHz band are subject to the specific relocation procedures adopted in GN Docket No. 22-352. New Entrants may negotiate with Broadcast Auxiliary Service (BAS) licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 12,700-13,250 MHz band (Existing 12.7 GHz Licensees) for the purpose of agreeing to terms under which the Existing 12.7 GHz Licensees in the 12,700-13,250 MHz band would relocate their authorized operation, if timely certified as required in accordance with the procedures set-forth in GN Docket No. 22-352, or discontinue use of the 12,700-13,250 MHz band.

(b) An Existing Licensee and Existing 12.7 GHz Licensee will maintain primary status in the band until the operations of the Existing Licensee or Existing 12.7 GHz Licensee are relocated by a New Entrant, are discontinued under the terms of paragraph (a) of this section, or become secondary under the terms of paragraphs (e)(6) or (f)(6) of this section or the Existing Licensee or Existing 12.7 GHz Licensee indicates to a New Entrant that it declines to be relocated.

(c) The Commission will amend the operating license of the Existing Licensee or Existing 12.7 GHz Licensee, other than the mobile operations of an Existing 12.7 GHz Licensee that has been transitioned to the repack band, to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee or Existing 12.7 GHz Licensee might incur as a result of operation in another authorized band or migration to another medium;

(2) The New Entrant completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television Transmission Service frequencies and frequency coordination.

(3) The New Entrant builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee or Existing 12.7 GHz Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff. If, within one year after the relocation to new facilities the Existing Licensee or Existing 12.7 GHz Licensee demonstrates that the new facilities are not comparable to the former facilities, the New Entrant must remedy the defects.

* * * * *

(f) Subject to the terms of this paragraph (f), the relocation of Existing 12.7 GHz Licensees will be carried out by New Entrants in the following manner:

(1) Existing 12.7 GHz Licensees and New Entrants may negotiate individually or collectively for relocation of Existing 12.7 GHz Licensees to comparable facilities, as that term is used in § 101.73 of this chapter. Parties may not decline to negotiate, though Existing 12.7 GHz Licensees may decline to be relocated.

(i) New Entrants are required to relocate the fixed microwave links of Existing 12.7 GHz Licensees prior to commencing operations if interference would occur. A New Entrant must conform to the technical criteria specified in TIA Bulletin TSB 10-F, or procedures other than TSB 10-F that follow generally acceptable good engineering practices pursuant to Section 101.105(c) of the Commission's rules, to determine if interference would occur such that their relocation would be necessary before a New Entrant's operations could commence.

(ii) New Entrants must relocate the non-fixed and mobile operations of all Existing 12.7 GHz Licensees on a market-by-market basis in a Nielsen Designated Market Areas (DMA), as such DMAs existed on September 19, 2022, in which it seeks to provide service prior to commencing operations, except those Existing 12.7 GHz Licensees that decline relocation.

(iii) Such relocation negotiations shall be conducted as "mandatory negotiations," as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement prior to the expiration of the mandatory negotiation period, New Entrants may involuntarily relocate such Existing 12.7 GHz Licensees in accordance with procedures set-forth in § 101.75 of this chapter.

(iv) After the end of the mandatory negotiation period, an New Entrant may involuntary relocate any Existing 12.7 GHz Licensees with which they have been unable to reach a negotiated agreement.

(2) Notwithstanding paragraph (f)(1) above, the non-fixed and mobile operations of Existing 12.7 GHz Licensees' operations in an adjacent market may need to be relocated even though the New Entrant does not initiate operations in that adjacent market. A New Entrant undertaking clearing would be obligated to relocate all incumbent non-fixed and mobile operations of Existing 12.7 GHz Licensees in all affected markets, including those markets where the New Entrant provides partial, minimal, or even no service. A New Entrant must conform to the technical criteria specified in TIA Bulletin TSB 10-F, or procedures other than TSB 10-F that follow generally acceptable good engineering practices pursuant to Section 101.105(c) of the Commission's rules, to determine any additional market(s) where a New

Entrant would cause interference to the non-fixed and mobile operations of Existing 12.7 GHz Licensees, such that their relocation would be necessary before a New Entrant commences operations.

(3) The obligations of a New Entrant to relocate an Existing 12.7 GHz Licensee will terminate on the sunset date for Existing 12.7 GHz Licensee to retain primary operations in the band. On this date, all Existing 12.7 GHz Licensees will become secondary in the 12.7-13.25 GHz band with the exception of mobile BAS relocated to the repacked band. Upon written demand by a New Entrant that intends to commence operations in the 12.7-13.25 GHz band, Existing 12.7 GHz Licensees that have not been relocated to the repacked band must cease operations in the 12.7-13.25 GHz band within six months.

(4) The cost-sharing obligations of New Entrants for the relocation of the fixed microwave links of Existing 12.7 GHz Licensees is governed by Sections 27.1760-27.1767 of this chapter. The cost-sharing obligations of New Entrants for the relocation of non-fixed and mobile operations of Existing 12.7 GHz Licensee is governed by this subparagraph (f)(4). All New Entrants to the 12.7-13.25 GHz band are required to bear a proportional share of the costs incurred in the relocation of the non-fixed or mobile operations of an Existing 12.7 GHz Licensees, on a *pro rata* basis according to the amount of spectrum each licensee is assigned relative to the amount of 12.7 GHz spectrum that has been licensed. New Entrants that incur relocation costs may seek reimbursement for compensable costs from other New Entrants that have been licensed to provide service in a relocated market prior to the sunset date, *i.e.,* the date on which the relocation obligation terminates. New Entrants that are licensed prior to the sunset date must satisfy their reimbursement obligations for relocated markets in full. Because a New Entrant may be required to relocate the non-fixed and mobile operations of Existing 12.7 GHz Licensees in adjacent markets pursuant to (f)(2), the New Entrant may seek full reimbursement of compensable costs for the relocation of an adjacent market from New Entrants that have been licensed to provide service in the adjacent market. Reimbursement of compensable costs for a relocated market is not subject to depreciation. Compensable costs are limited to the actual costs of relocation and based on the definition set-forth in Section 27.1762(b), as adjusted to reflect mobile operations of Existing 12.7 GHz Licensees. New Entrants must maintain and, as requested, share documentation of relocation costs consistent with Section 27.1763(b), as modified to reflect mobile operations of Existing 12.7 GHz Licensees. New entrants are expected to act in good faith in satisfying the cost-sharing obligations. Parties are encouraged to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques to resolve disputes arising out of reimbursement and cost-sharing, such as disputes over the amount of reimbursement required. Parties of interest contesting cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with other affected parties and, if necessary, with the Commission.

PART 78 – CABLE TELEVISION RELAY SERVICE

25. The authority citation for Part 78 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

26. Modify §§ 78.18(b) and (l) to read as follows:

§ 78.18. Frequency assignments.

(b) On or after September 19, 2022, applications for new or modified stations in the 12.7-13.25 GHz band under parts 74, 78, and 101 are unacceptable for filing and shall be dismissed, except for applications of eligible incumbent Television pickup (TVPU) and cable television relay service (CARS) pickup stations (collectively, mobile BAS/CARS) to modify incumbent authorizations to the repacked mobile BAS/CARS sub-band.

(l) The mobile BAS/CARS repack band(s) is reserved for eligible incumbent that were licensed to operate in the 12.7-13.25 GHz band pursuant to applications filed before September 19, 2022.

27. Delete § 78.18(m).

28. Revise the heading of § 78.40 and paragraphs (a)-(e) and add paragraph (g) to read as follows:

§ 78.40 Transition of the 1990-2025 MHz and 12,700-13,250 MHz bands from the Cable Television Relay Service to Emerging Technologies and Reimbursement and Cost-Sharing in the 12,700-13,250 MHz band.

(a) New Entrants are collectively defined as those licensees proposing to use emerging technologies to implement Mobile Satellite Services in the 2000-2020 MHz band (MSS licensees), those licensees authorized after July 1, 2004 to implement new Fixed and Mobile services in the 1990-1995 MHz band, those licensees authorized after September 9, 2004 in the 1995-2000 MHz and 2020-2025 MHz bands, and those licensees authorized after [date] in the 12,700-13,250 MHz band. *** New Entrants in the 12,700-13,250 MHz band are subject to the specific relocation procedures adopted in GN Docket No. 22-352. New entrants may negotiate with Cable Television Relay Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 12,700-13,250 MHz bands (Existing 12.7 GHz Licensees) for the purpose of agreeing to terms under which the Existing 12.7 GHz Licensees in the 12,700-13,250 MHz band would relocate their operations to the repacked band, to other authorized bands, or to other media; or, alternatively, would accept a sharing arrangement with the New Entrants that may result in an otherwise impermissible level of interference to the Existing 12.7 GHz Licensee's operations in the 12,700-13,250 MHz band.

(b) An Existing Licensee and Existing 12.7 GHz Licensee will maintain primary status in the band until the operations of the Existing Licensee or Existing 12.7 GHz Licensee are relocated by a New Entrant, or become secondary under the terms of paragraphs (g)(3) of this section or the Existing Licensee or Existing 12.7 GHz Licensee indicates to a New Entrant that it declines to be relocated.

(c) The Commission will amend the operating license of the Existing Licensee or Existing 12.7 GHz Licensee to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee or Existing 12.7 GHz Licensee might incur as a result of operation in another authorized band or migration to another medium;

(2) The New Entrant completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Cable Television Relay Service frequencies and frequency coordination.

(3) The New Entrant builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee or Existing 12.7 GHz Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If, within one year after the relocation to new facilities the Existing Licensee or Existing 12.7 GHz demonstrates that the new facilities are not comparable to the former facilities, the New Entrant must remedy the defect.

* * * * *

(g) Subject to the terms of this paragraph (g), the relocation of Existing 12.7 GHz Licensees will be carried out by New Entrants in the following manner:

(1) Existing 12.7 GHz Licensees and New Entrants may negotiate individually or collectively for relocation of Existing 12.7 GHz Licensees to comparable facilities, as that term is used in § 101.73 of this

chapter. Parties may not decline to negotiate, though Existing 12.7 GHz Licensees may decline to be relocated.

(i) New Entrants are required to relocate the fixed microwave links of Existing 12.7 GHz Licensees prior to commencing operations if interference would occur. A New Entrant must conform to the technical criteria specified in TIA Bulletin TSB 10-F, or procedures other than TSB 10-F that follow generally acceptable good engineering practices pursuant to Section 101.105(c) of the Commission's rules, to determine if interference would occur such that their relocation would be necessary before a New Entrant's operations could commence.

(ii) New Entrants must relocate all non-fixed and mobile operations of Existing 12.7 GHz Licensees on a market-by-market basis in a Nielsen Designated Market Areas (DMA), as such DMAs existed on September 19, 2022, where it seeks to provide service prior to commencing operations, except those Existing 12.7 GHz Licensees that decline relocation.

(iii) Relocation negotiations shall be conducted as "mandatory negotiations," as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement prior to the expiration of the mandatory negotiation period, New Entrants may involuntarily relocate such Existing 12.7 GHz Licensees in accordance with procedures set-forth in § 101.75 of this chapter.

(iv) After the end of the mandatory negotiation period, an New Entrant may involuntary relocate any Existing 12.7 GHz Licensees with which they have been unable to reach a negotiated agreement.

(2) Notwithstanding paragraph (f)(1) above, the non-fixed and mobile operations of Existing 12.7 GHz Licensees' operations in an adjacent market may need to be relocated even though the New Entrant does not initiate operations in that adjacent market. A New Entrant undertaking clearing would be obligated to relocate all incumbent non-fixed and mobile operations of Existing 12.7 GHz Licensees in all affected markets, including those markets where the New Entrant provides partial, minimal, or even no service. A New Entrant must conform to the technical criteria specified in TIA Bulletin TSB 10-F, or procedures other than TSB 10-F that follow generally acceptable good engineering practices pursuant to Section 101.105(c) of the Commission's rules, to determine any additional market(s) where a New Entrant would cause interference to the non-fixed and mobile operations of Existing 12.7 GHz Licensees, such that their relocation would be necessary before a New Entrant commences operations.

(3) The obligations of a New Entrant to relocate an Existing 12.7 GHz Licensee will terminate on the sunset date for Existing 12.7 GHz Licensee to retain primary operations in the band. On this date, all Existing 12.7 GHz Licensees will become secondary in the 12.7-13.25 GHz band with the exception of those relocated to the repacked band. Upon written demand by a New Entrant that intends to commence operations in the 12.7-13.25 GHz band, Existing 12.7 GHz Licensees that have not been relocated to the repacked band must cease operations in the 12.7-13.25 GHz band within six months.

(4) The cost-sharing obligations of New Entrants for the relocation of the fixed microwave links of Existing 12.7 GHz Licensees is governed by Sections 27.1760–27.1767 of this chapter. The cost-sharing obligations of New Entrants for the relocation of non-fixed and mobile operations of Existing 12.7 GHz Licensee is governed by this subparagraph (g)(4). All New Entrants to the 12.7-13.25 GHz band are required to bear a proportional share of the costs incurred in the relocation of the non-fixed or mobile operations of an Existing 12.7 GHz Licensees, on a *pro rata* basis according to the amount of spectrum each licensee is assigned relative to the amount of 12.7 GHz spectrum that has been licensed. New Entrants that incur relocation costs may seek reimbursement for compensable costs from other New Entrants that have been licensed to provide service in a relocated market prior to the sunset date, *i.e.,* the date on which the relocation obligation terminates. New Entrants that are licensed prior to the sunset date must satisfy their reimbursement obligations for relocated markets in full. Because a New Entrant may be required to relocate the non-fixed and mobile operations of Existing 12.7 GHz Licensees in adjacent markets pursuant to (g)(2), the New Entrant may seek full reimbursement of compensable costs for the relocation of an adjacent market from New Entrants that have been licensed to provide service in the adjacent market. Reimbursement of compensable costs for a relocated market is not subject to

depreciation. Compensable costs are limited to the actual costs of relocation and based on the definition set-forth in Section 27.1762(b), as adjusted to reflect mobile operations of Existing 12.7 GHz Licensees. New Entrants must maintain and, as requested, share documentation of relocation costs consistent with Section 27.1763(b), as modified to reflect mobile operations of Existing 12.7 GHz Licensees. New entrants are expected to act in good faith in satisfying the cost-sharing obligations. Parties are encouraged to use expedited Alternative Dispute Resolution (ADR) procedures, such as binding arbitration, mediation, or other ADR techniques to resolve disputes arising out of reimbursement and cost-sharing, such as disputes over the amount of reimbursement required. Parties of interest contesting cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with other affected parties and, if necessary, with the Commission.

PART 101 - FIXED MICROWAVE SERVICES

29. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

30. Revise the undesignated center heading above § 101.69 and the introductory text, paragraph (a), and the first sentence of the introductory text of paragraph (d) of § 101.69 to read as follows:

Policies Governing Microwave Relocation From the 1850-1990, 2110-2200, and 12,700-13,250 MHz Bands

§ 101.69 Transition of the 1850-1990 MHz, 2110-2150 MHz, 2160-2200, and 12,700-13,250 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

Fixed Microwave Services (FMS) in the 1850-1990 MHz, 2110-2150 MHz, 2160-2200, and 12,700-13,250 MHz bands have been allocated for use by emerging technology (ET) services, including Personal Communications Services (PCS), Advanced Wireless Services (AWS), and Mobile Satellite Services (MSS). The rules in this section provide for a transition period during which ET licensees may relocate existing FMS licensees using these frequencies to other media or other fixed channels, including those in other microwave bands.

(a) ET licensees may negotiate with FMS licensees authorized to use frequencies in the 1850-1990 MHz, 2110-2150 MHz, 2160-2200 MHz and 12,700-13,2500 MHz bands, for the purpose of agreeing to terms under which the FMS licensees would:

* * * * *

(d) Relocation of FMS licensees in the 2110-2150, 2160-2200, and 12,700-13,250 MHz band will be subject to mandatory negotiations only. * * *

31. Amend § 101.73 by revising paragraph (a) and the first sentence of the introductory text of paragraph (d) to read as follows:

§ 101.73 Mandatory negotiations.

(a) A mandatory negotiation period may be initiated at the option of the ET licensee. Relocation of FMS licensees by Mobile Satellite Service (MSS) operators and AWS licensees in the 2110-2150 MHz and 2160-2200 MHz bands or ET licensee in the 12,700-13,250 MHz band will be subject to mandatory negotiations only.

* * * * *

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2110-2150, 2160-2200 MHz, and 12,700-13,250 MHz bands. * * *

32. Revise the heading of § 101.79 and paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850-1990 MHz, 2110-2150 MHz, 2160-2200 MHz, and 12,700-13,250 MHz bands.

(a) FMS licensees will maintain primary status in the 1850-1990 MHz, 2110-2150 MHz, 2160-2200 MHz, and 12,700-13,250 MHz bands unless and until an ET licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset. Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA TSB 10–F (for terrestrial-to-terrestrial situations) or TIA TSB 86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis. The date that the relocation rules sunset is determined as follows:

* * * * *

(3) For the 12,700-13,250 MHz band, the sunset date shall be three years after the first ET license is issued in the band.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis in WT Docket No. 20-443

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking (Further Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on 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. Although the Commission declines to add a mobile allocation or adopt service rules for expanded terrestrial, high-powered, two-way mobile operations in the 12.2-12.7 GHz band (12.2 GHz band) the *Further Notice* seeks additional comment on other possible fixed terrestrial uses of the band. The *Further Notice* explores expanded licensed fixed uses as well as unlicensed opportunities in the band. The potential rule changes seek to facilitate more robust terrestrial fixed or unlicensed use while protecting incumbent operations in the bands. The *Further Notice* pursues the Commission's joint goals of maximizing the use of these 500 MHz of spectrum, while balancing desired speed to the market, efficiency of use, and effectively accommodating incumbent operations in the band.

3. In the United States, the 12.2 GHz band is allocated on a primary basis for non-Federal use for the Broadcasting Satellite Service (BSS) (referred to domestically in the band as Direct Broadcast Satellite (DBS); the Fixed Satellite Service (space-to-Earth) limited to non-geostationary orbit systems (NGSO FSS); and the Fixed Service.[4] While these three services are co-primary, the NGSO FSS and

[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] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *See* 47 CFR § 2.106, United States Table of Frequency Allocations, non-Federal Table for the band 12.2-12.7 GHz. NGSO FSS (space-to-Earth) operations are authorized pursuant to international footnote 5.487A, which provides additional allocations including in Region 2 as follows:

> [The 12.2-12.7 GHz is] 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 [ITU Radio Regulations] 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 [ITU Radiocommunication] 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 [international footnote] No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the [12 GHz band] shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

47 CFR § 2.106, footnote 5.487A. When an international footnote is applicable without modification to non-Federal operations, the Commission places the footnote on the non-Federal Table. *See* 47 CFR § 2.105(d)(5).

Fixed Service are allocated on a non-harmful interference basis with respect to BSS.[5] Currently there are three services authorized and operating in the band: DBS providers operating under the primary BSS allocation, Multi-Channel Video and Data Distribution Service (MVDDS) licensees operating on a non-harmful interference basis to DBS under the co-primary Fixed Service allocation, and NGSO FSS licensees operating on a non-harmful interference basis to DBS under the co-primary NGSO FSS allocation. This proceeding is predicated in part on the MVDDS 5G Coalition petition for rulemaking,[6] however alternative uses for the band were raised by various commenters. Incumbent NGSO and some DBS interests seek to continue to use the band without ceding rights to MVDDS licensees. To facilitate further consideration of the various proposals in the *Further Notice* the Commission seeks comments on how to weigh public interest considerations associated with allowing, prohibiting and prioritizing uses and on the costs and benefits of allowing new uses of the 12 GHz bands.

4. Our rules currently enable sharing between co-primary NGSO FSS and MVDDS using a combination of technical limitations, information sharing, and first-in-time procedures.[7] While we decline to add a mobile allocation or adopt service rules for expanded terrestrial, high-powered, two-way mobile operations in the 12.2-12.7 GHz band, we remain interested in potential expanded terrestrial use of the band. We therefore seek comment on additional possible terrestrial uses of the 12.2-12.7 GHz band including one-way, point-to-point or point-to-multipoint fixed links at higher powers than current MVDDS rules; two-way, point-to-point fixed links at standard part 101 power limits; two-way, point-to-multipoint links; indoor only underlay on a licensed by rule basis; unlicensed use; and expanded use through technology-based share using Automated Frequency Coordination (AFC).

5. By modifying our rules and implementing policies designed to provide for more robust use of the 12 GHz band, the Commission hopes to ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of a wide variety of services, ultimately leading to greater benefits to consumers.

B. Legal Basis

6. The proposed action is authorized pursuant to sections 1, 2, 4, 5, 301, 302, 303, 304, 307, 309, 310, and 316 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154, 155, 301, 302a, 303, 304, 307, 309, 310, 316, and section 1.411 of the Commission's rules, 47 CFR § 1.411.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[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

[5] *See* 47 CFR § 2.106, n.5.490 (International Footnote). 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.

[6] MVDDS 5G Coalition Petition. *See also* Petition Public Notice. In its most recent filing, the Coalition's members were reported to be: Cass Cable TV, Inc., DISH Network L.L.C., Go Long Wireless LTD., MDS Operations, Inc., MVD Number 53 Partners, Satellite Receivers, Ltd., SOUTH.COM LLC, Story Communications, LLC, and Vision Broadband, LLC. *See* Letter from MVDDS 5G Coalition, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, at 1 (filed May 28, 2019). We note that MDS Operations subsequently assigned its remaining 60 MVDDS licenses to RS Access.

[7] *See* 47 CFR §§ 101.113(a) n.11; 101.147(p).

[8] 5 U.S.C. § 603(b)(3).

[9] 5 U.S.C. § 601(6).

same meaning as the term "small business concern" under the Small Business Act."[10] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[11]

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[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]

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."[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]

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."[18] U.S. Census Bureau data from the 2017 Census

[10] *Id*. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[11] 15 U.S.C. § 632.

[12] 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] 5 U.S.C. § 601(4).

[16] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[17] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[18] 5 U.S.C. § 601(5).

of Governments[19] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[20] Of this number, there were 36,931 general purpose governments (county,[21] municipal, and town or township[22]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[23] with enrollment populations of less than 50,000.[24] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[25]

11. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* There are several analogous industries with an SBA small business size standard that are applicable to RF Manufacturers. These industries are Fixed Microwave Services, Other Communications Equipment Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these industries and the SBA small business size standards are detailed below.

12. *Fixed Microwave Services.* Fixed microwave services include common carrier,[26] private-operational fixed,[27] and broadcast auxiliary radio services.[28] They also include the Upper Microwave

[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.

[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* 47 CFR part 101, subparts C and I.

[27] *See id*. subparts C and H.

[28] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

Flexible Use Service (UMFUS),[29] Millimeter Wave Service (70/80/90 GHz),[30] Local Multipoint Distribution Service (LMDS),[31] the Digital Electronic Message Service (DEMS),[32] 24 GHz Service,[33] Multiple Address Systems (MAS),[34] and Multichannel Video Distribution and Data Service (MVDDS),[35] where in some bands licensees can choose between common carrier and non-common carrier status.[36] Wireless Telecommunications Carriers (*except* Satellite)[37] is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[38] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[39] Of this number, 2,837 firms employed fewer than 250 employees.[40] Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

13. The Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

14. *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.[41] 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.[42] By exception, establishments providing satellite television distribution services using facilities

[29] *See* 47 CFR part 30.

[30] *See* 47 CFR part 101, subpart Q.

[31] *See id*. subpart L.

[32] *See id*. subpart G.

[33] *See id*.

[34] *See id.* subpart O.

[35] *See id*. subpart P.

[36] *See* 47 CFR §§ 101.533, 101.1017.

[37] *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.

[38] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[39] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[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] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[42] *Id.*

and infrastructure that they operate are included in this industry.[43] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[44]

15. 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 that operated in this industry for the entire year.[46] Of this number, 2,964 firms operated with fewer than 250 employees.[47] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[48] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[49] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[50] 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.[51] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[52] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[53] Of that number, 2,837 firms employed fewer than 250 employees.[54] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of

[43] *Id.*

[44] 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.

[45] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[46] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[47] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[48] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[49] *Id.*

[50] *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.

[51] *Id.*

[52] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[53] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[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.

wireless services.[55] Of these providers, the Commission estimates that 511 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.

17. *Satellite Telecommunications*. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[57] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small.[58] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[59] Of this number, 242 firms had revenue of less than $25 million.[60] 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.[61] Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.[62] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

18. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[63] 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.[64] 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.[65] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[66] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry

[55] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[56] *Id.*

[57] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[58] *See* 13 CFR § 121.201, NAICS Code 517410.

[59] *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.

[60] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[61] 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.

[62] *Id.*

[63] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[64] *Id.*

[65] *Id*.

[66] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

that operated for the entire year.[67] Of those firms, 1,039 had revenue of less than $25 million.[68] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

19. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[69] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[70] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[71] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[72] Of this number, 624 firms had fewer than 250 employees.[73] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

20. The Commission expects the various proposals seeking to change rules to permit expanded fixed use of the 12.2 GHz band considered in the *Further Notice* may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities, as well as on other licensees and applicants if adopted. In particular, potential rule changes involving licensing, registration, and coordination could increase recordkeeping, reporting, or other operational obligations for small entities and for other licensees and applicants. There may also be new compliance obligations created by required equipment upgrades. As a result of these potential additional obligations, small entities may need to hire outside consulting or other professional services for compliance purposes and therefore, the Commission has requested cost-benefit analyses in the *Further Notice*. The Commission expects to make a determination as to whether small entities will incur additional costs for complying with the rules upon its review of any comments filed.

21. The Commission is also considering adopting rules that will promote shared access to the 12.2 GHz band that may lead to additional compliance requirements. For example, should expanded terrestrial use be authorized in the band, the Commission has requested comment on whether the burden

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[67] *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.

[68] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[69] *See* U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[70] *Id*.

[71] *See* 13 CFR § 121.201, NAICS Code 334220.

[72] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220

[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.

of avoiding or correcting for interference to existing or future DBS subscribers should be revised, or whether new terrestrial operations should be subject to the same requirements for protecting DBS subscribers that currently apply to other services in the band. Another proposed approach for comment aimed at protecting incumbents raised in the *Further Notice* is whether new terrestrial operations should be required to disclose certain technical data to facilitate coordination, which would impact small entities providing new service within the band.

22. The Commission's assigning of new terrestrial service rights could also result in new or modified compliance obligations. For example, the Commission seeks comment as to whether it should modify existing licenses using our section 316 authority to conform to new service rules designed to allow increased operational flexibility when considering any new fixed service in the band. The Commission is also considering alternative approaches, such as site-based, individually coordinated operations relative to existing MVDDS operations, or whether to allow expanded opportunities for disaggregation and partitioning to promote more intensive use of the spectrum.

23. Additionally, potential approaches to facilitate sharing in the 12.2 GHz band upon which the Commission seeks comment in the *Further Notice*—both expanded unlicensed use and technology-based sharing approaches such as Automated Frequency Coordination—could also impact compliance obligations if adopted. For example, we invite small entity and other commenters to discuss whether unlicensed use may be permitted within the 12.2—12.7 GHz band under provisions that could be implemented under our part 15 rules. We also seek comment as to whether we could permit less restrictive unlicensed use (e.g., higher indoor power levels, outdoor use, etc.) with a label warning to alert consumers that use near a DBS, NGSO FSS, or MVDDS receive site could result in harmful interference to the consumer device. Alternatively, we ask for comment as to whether dynamic, database-driven coordination capabilities such as have been implemented in other frequency bands (e.g., 6 GHz unlicensed and 3.5 GHz Citizens Broadband Radio Service) should be implemented in the 12.2 GHz band or if another type of frequency management system would allow for a greater opportunity for expanded terrestrial services to develop within the band.

24. Other potential impacts to compliance obligations center around the maintenance of technical data as a means of supporting such a system. For example, DBS operators are currently required to maintain data on current subscriber locations; NGSO FSS operators have no similar requirement to track consumer terminal location data, and deployments in the band continue to increase. If this system were to be implemented, we seek comment as to whether additional technical data would need to be collected or shared among the licensees so that an advanced frequency management system could effectively manage shared use and prevent interference exceedance to the different services in the band. In our discussion of these proposals in the *Further Notice*, we have requested comments from the parties in the proceeding and requested cost-benefit analyses, which may help the Commission identify and evaluate relevant matters for small entities, including any compliance costs and burdens that may result in the proceeding.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. 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."[74]

[74] 5 U.S.C. § 603(c)(1)-(4).

26. In the *Further Notice*, the Commission continued to explore how to best protect current usage of the 12.2 GHz band, while simultaneously seeking ways to increase innovation in the band by expanding further terrestrial uses that could benefit millions of people across the country, as well as small and other entities utilizing those services. While doing so, the Commission is also mindful that small and other entities may incur costs should the proposals we make, and the alternatives upon which we seek comment in the *Further Notice*, be adopted. Below, we discuss some specific actions taken and alternatives considered by the Commission in the *Further Notice*.

27. In the *Further Notice*, the Commission considered different ways in which to potentially expand licensed use of terrestrial fixed services in the 12.2 GHz band. For example, expansion of licensed use for incumbent MVDDS licensees could include increasing power limits or expanding terrestrial rights for incumbent MVDDS licensees. Incumbent MVDDS licensees that are small entities may benefit from the expansion of licensed use. At present, eight companies (10 legal entities) hold 191 MVDDS licenses: two DISH subsidiaries hold 82 licenses; RS Access, a subsidiary of a Dell investment fund, holds 60 licenses; two Go Long Wireless entities hold a total of 25 licenses; and five smaller companies hold a total of 24 licenses.[75]

28. Additionally, in the *Further Notice* among other things, the Commission considered what types of technical data reporting requirements should be considered. More specifically, different technical data reporting requirements or timetables that take into account their limited resources; simplification or consolidation of reporting requirements for small entities; or an exemption from any reporting requirements considered as potential steps the Commission could take to the benefit of small entities. We also considered the expansion of unlicensed use of the band, as a means of potentially creating additional capacity for Internet of Things (IoT) use,[76] or alternatively, other types of applications. As a means of accommodating this expansion, the Commission considered whether our rules for unlicensed low power indoor devices in the 6 GHz band could serve as a model for unlicensed use in the 12.2 GHz band. The use of existing rules as a model could make the compliance obligations we adopt for the 12.2 GHZ band easier to meet for those small entities already complying with similar requirements in the 6 GHz band. In the *Further Notice* we seek comment on this matter.

29. Lastly, the Commission considered whether there may be opportunities to take advantage of technological advancements to accommodate expanded terrestrial capabilities in the 12.2 GHz band. For example, services providing potentially dynamic, database-driven coordination capabilities, such as those that have been implemented in other frequency bands (e.g., 6 GHz unlicensed and 3.5 GHz Citizens Broadband Radio Service) could be implemented in the 12.2 GHz band. Alternatively, we considered whether perhaps another type of frequency management system would allow for a greater opportunity for expanded terrestrial services to develop within the band while affording protection to incumbent satellite and terrestrial services. The type of frequency management system adopted could make compliance easier to meet for small entities providing those services. Accordingly, in the *Further Notice* we seek additional comment on this issue.

30. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments, including cost-benefit analyses, filed in response to the *Further Notice*. The Commission's evaluation of this information will shape the final alternatives it

[75] The remaining 23 licenses automatically terminated for failure to meet the buildout requirement. *See Requests of Three Licensees of 22 Licenses in the Multichannel Video and Data Distribution Service for Extension of Time to Meet the Final Buildout Requirement for Providing Substantial Service under Section 101.1413 of the Commission's Rules, Applications of Three Licensees for Renewal of 22 Licenses in the Multichannel Video and Data Distribution Service*, Order, 33 FCC Rcd 10757 (WTB BD 2018), *recons. pending*. *See also* Blumenthal DTV LLC, Call Sign WQAR709 (Terminated July 26, 2014).

[76] Comments of Public Interest Organizations (New America's Open Technology Institute, et. al.), at 2, 17.

considers to minimize any significant economic impact that may occur on small entities, the final conclusions it reaches, and any final rules it promulgates in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

31. None.

APPENDIX C

Initial Regulatory Flexibility Analysis in GN Docket No. 22-352

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 attached *Notice of Proposed Rulemaking* (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[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. Today's *Notice* seeks comment on proposals to repurpose some or all of the 550 megahertz of upper mid-band spectrum between 12.7-13.25 GHz (12.7 GHz band) for mobile broadband or other expanded use. The Commission is pursuing the joint goals of making this spectrum available for new wireless uses while effectively accommodating incumbent operations in the band. Accordingly, the *Notice* seeks comment on various proposals for transitioning all or part of the band to make it available for mobile broadband, as well as other expanded uses that will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks so that they may keep pace with the demands placed upon them by new technologies and possible new types of services for consumers and businesses.

3. The *Notice* proposes to require new licensees to protect fixed point-to-point incumbents until a sunset date with the option to negotiate agreements for accelerated relocations to other bands or media, and to repack mobile Broadcast Auxiliary Service (BAS) and Cable Television Relay Services (CARS) incumbents within a portion(s) of the band designated for such use. We also propose to grandfather the 23 Fixed Satellite Service (FSS) earth stations currently authorized to operate in the band (Earth-to-space) in accordance with the U.S. Table of Allocations, but otherwise prohibit all future earth stations of this type. Other earth station operations in the band could continue to operate on a non-interference, unprotected basis. Furthermore, we propose to dismiss any new space station license applications and new requests for access to the U.S. market through non-U.S.-licensed space stations, or those parts of any such applications and requests, that seek to operate in the 12.7 GHz band. Under these proposals, the band would be unavailable for new Fixed Service (FS), mobile BAS, or FSS earth stations and would become available for mobile broadband and other expanded uses. The *Notice* encourages commenters to discuss and quantify the costs and benefits associated with any of the proposed approaches for transitioning the band, along with other helpful technical or procedural details. Today's actions are another step in the Commission's efforts to close the digital divide by providing wireless broadband connectivity across the nation and to secure U.S. leadership in the next generation of wireless services, including fifth-generation (5G) wireless, 6G, and beyond.

B. Legal Basis

4. The proposed action is taken pursuant to sections 1, 2, 4, 5, 301, 302, 303, 304, 307, 309, 310, and 316 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154, 155, 301, 302a, 303, 304, 307, 309, 310, 316, and section 1.411 of the Commission's rules, 47 CFR § 1.411.

[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] 5 U.S.C. § 603(a).

[3] *Id*.

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 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]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[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]

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."[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]

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[4] *Id*. § 603(b)(3).

[5] *Id.* § 601(6).

[6] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[7] 15 U.S.C. § 632.

[8] 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 of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[13] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO

(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."[14] U.S. Census Bureau data from the 2017 Census of Governments[15] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[16] Of this number, there were 36,931 general purpose governments (county,[17] municipal, and town or township[18]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[19] with enrollment 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]

9. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* There are several analogous industries with an SBA small business size standard that are applicable to RF Manufacturers. These industries are Fixed Microwave Services, Other Communications Equipment Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these industries and the SBA small business size standards are detailed below.

(Continued from previous page)
BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[14] 5 U.S.C. § 601(5).

[15] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[16] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[17] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[18] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[19] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[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.

10. *Fixed Microwave Services.* Fixed microwave services include common carrier,[22] private-operational fixed,[23] and broadcast auxiliary radio services.[24] They also include the Upper Microwave Flexible Use Service (UMFUS),[25] Millimeter Wave Service (70/80/90 GHz),[26] Local Multipoint Distribution Service (LMDS),[27] the Digital Electronic Message Service (DEMS),[28] 24 GHz Service,[29] Multiple Address Systems (MAS),[30] and Multichannel Video Distribution and Data Service (MVDDS),[31] where in some bands licensees can choose between common carrier and non-common carrier status.[32] Wireless Telecommunications Carriers (*except* Satellite)[33] is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[34] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[35] Of this number, 2,837 firms employed fewer than 250 employees.[36] Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

11. The Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

12. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone

[22] *See* 47 CFR part 101, subparts C and I.

[23] *See id*. subparts C and H.

[24] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[25] *See* 47 CFR part 30.

[26] *See* 47 CFR part 101, subpart Q.

[27] *See id*. subpart L.

[28] *See id*. subpart G.

[29] *See id*.

[30] *See id.* subpart O.

[31] *See id*. subpart P.

[32] *See* 47 CFR §§ 101.533, 101.1017.

[33] *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.

[34] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[35] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[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.

apparatus, and radio and television broadcast, and wireless communications equipment).[37] Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.[38] The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.[39] For this industry, U.S. Census Bureau data for 2017 shows that 321 firms operated for the entire year.[40] Of that number, 310 firms operated with fewer than 250 employees.[41] Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

13. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[42] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[43] The SBA small business size standard for this industry classifies firms having 1,250 employees or less as small.[44] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[45] Of this number, 624 had fewer than 250 employees.[46] Based on this data, we conclude that a majority of manufacturers in this industry are small.

14. *Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) Licensees (TV Stations).* Only licensees of broadcast stations, broadcast networks, and cable networks can hold RPU licenses. BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio or from the studio to the transmitter). The Commission nor the SBA has developed a small business size standard for Broadcast Auxiliary Services (BAS) Remote Pickup (RPU) licensees. Television Broadcasting[47] is the closest industry with a SBA small business size standard for Remote

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[37] *See* U.S. Census Bureau, *2017 NAICS Definitions, "334290 Other Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334290&year=2017&details=334290.

[38] *Id.*

[39] *See* 13 CFR § 121.201, NAICS Code 334290.

[40] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334290, https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[41] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[42] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[43] *Id.*

[44] *See* 13 CFR § 121.201, NAICS Code 334220.

[45] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[46] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[47] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

pickup BAS when used by a TV station. The SBA small business size standard for this industry classifies a business as small if it has $41.5 million or less in annual receipts.[48] 2017 U.S. Census Bureau indicates that 744 firms in this industry operated for the entire year.[49] Of that number, 657 firms had revenue of less than $25,000,000.[50] Based on this data we estimate that the majority of firms are small entities under the SBA size standard.

15. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[51] 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.[52] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[53] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[54] Of that number, 2,837 firms employed fewer than 250 employees.[55] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[56] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[57] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *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."[58] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small.[59] U.S. Census Bureau data for 2017 show that 275

[48] *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[49] *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.

[50] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[51] *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.

[52] *Id.*

[53] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[54] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[55] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[56] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[57] *Id.*

[58] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[59] *See* 13 CFR § 121.201, NAICS Code 517410.

firms in this industry operated for the entire year.[60] Of this number, 242 firms had revenue of less than $25 million.[61] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[62] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[63] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. The Commission expects the rules proposed in the *Notice* governing the operations of new licensees in the 12.7 GHz band will impose new reporting or recordkeeping and/or other compliance obligations on small entities as well as other applicants and licensees, if adopted. The rule changes proposed in this *Notice* sunsetting fixed service operations in the 12.7 GHz band, repacking mobile BAS/CARS operations, and prohibiting certain fixed satellite service operations in the band, could also impose other new compliance obligations on small and other entities. In the event these proposed actions are adopted, the *Notice* seeks comment on relocation options and on transition and protection mechanisms for incumbent non-federal operations. In the alternative, the *Notice* explores the possibility of shared use of the band. Finally, for newly licensed mobile and other expanded uses in the 12.7 GHz band, the *Notice* seeks comment on various service rules that should apply, including construction benchmarks and technical operating requirements. The projected reporting, recordkeeping, and other compliance obligations proposed for small entities and other licensees are described below.

18. *Certification.* In the *Certification Requirement for Part-74 and Part 78 Licensees Order* (*Order*) attached to the *Notice*, we direct each BAS and CARS licensee for each of their authorizations to use the 12.7 GHz band to certify the accuracy of all information reflected on each license, including whether the facilities are *operating* as authorized. If a licensee is unable to make such a certification for a given license, it must cancel or modify the license in accordance with the Commission's rules. We propose in the *Notice* to protect only those BAS and CARS stations licensed in the Universal Licensing System (ULS) and the Cable Operations and Licensing System (COALS), respectively, for which the licensee timely files the certification required in the *Order*. To minimize burdens on entities, including small entities, the Commission exempted from the certification requirement of 12.7 GHz band licenses for which the licensee has filed an application in ULS or COALS on or after January 1, 2021. The *Notice* does not require other incumbents to provide certifications for their existing authorized operations at this time. However, the Commission encourages all licensees to timely submit their data and update their information because it may use this data to inform its deliberations regarding the future use of the 12.7 GHz band. . Moreover, the *Notice* emphasizes that the Commission's rules require all in-band incumbents to operate in accordance with their authorizations and that the latter must be kept current. Therefore, while providing updated information may come at some cost, the revisions the Commission may ultimately adopt should benefit small entities by providing them with increased access to wireless

[60] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[61] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[62] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[63] *Id.*

spectrum, more information about opportunities in the 12.7 GHz band, and more flexibility to provide a wider range of services.

19. *Transitioning Mechanism*. In the *Notice*, the Commission proposes using the Emerging Technologies (ET) framework to relocate incumbent licensees and to introduce new services into the 12.7 GHz band. Pursuant to those procedures, if adopted, the Commission will set a sunset date for this band by which incumbent licensees may not cause harmful interference to new band entrants. Prior to this date, new entrants will be allowed to negotiate with incumbents to gain early entry into the band and, if necessary, may relocate the incumbents to comparable facilities. Because new entrants may have to relocate incumbents from a larger frequency range or greater geographic area than where the new entrants will operate, certain expenses will be placed upon incumbents by the proposed rules, and the Commission may establishes a companion set of cost-sharing procedures.[64] This process may require small entities that are incumbent operators in the band to participate in negotiations to reassign their spectrum access rights, involving additional attendant costs. Incumbents operating in the spectrum designated for new licensed mobile and expanded use would further be required to relocate their operations to different bands, potentially requiring reconfiguration or replacement of their existing facilities, also at additional cost.

20. *The 12.7 GHz Band Plan.* We propose to allocate the 12.7 GHz band as an unpaired band and to license it on an exclusive, geographic license area (using Partial Economic Areas (PEA)) basis, and in roughly 100 megahertz blocks without guard bands, which will permit the filing of mutually exclusive applications. The Commission's statutory authority to resolve mutually exclusive applications for initial licenses through a system of competitive bidding has lapsed.[65] Accordingly, in the event we determine to adopt a mutually exclusive application approach, we seek comment on how the Commission should resolve mutually exclusive applications for new initial licenses in the 12.7 GHz band in light of the lapse in our authority to use competitive bidding. In the event that the Commission's statutory authority with respect to auctions is restored, we delegate authority to WTB and OEA to seek comment on appropriate competitive bidding rules and procedures, consistent with prior Commission guidance.

21. *Licensing and Operating Rules.* In the *Notice,* we propose that licensees in the 12.7 GHz band would be required to comply with certain licensing and operating rules applicable to all part 27 services,[66] flexible use,[67] regulatory status,[68] foreign ownership reporting,[69] compliance with construction notification requirements,[70] renewal criteria,[71] permanent discontinuance of operations,[72] partitioning and

[64] *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *Notice* of Proposed Rule Making, 11 FCC Rcd 1923 (1995).

[65] *See* 47 U.S.C. § 309(j)(11).

[66] The *WRS Renewal 2nd R&O and FNPRM* adopted a unified framework for construction, renewal, and service continuity rules for flexible use geographic licenses in the Wireless Radio Services. *See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal et al.*, WT Docket No. 10-112, Second Report and Order and Further *Notice* of Proposed Rulemaking and Order, 32 FCC Rcd 8874 (2017) (*WRS Renewal Reform 2nd R&O and FNPRM*).

[67] 47 CFR §§ 2.106, 27.2, 27.3. Section 303(y) of the Act provides the Commission with authority to provide for flexibility of use if: "(1) such use is consistent with international agreements to which the United States is a party; and (2) the Commission finds, after notice and an opportunity for public comment, that (A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development; and (C) such use would not result in harmful interference among users." Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, 268-69; 47 U.S.C. § 303(y).

[68] 47 CFR § 27.10.

[69] 47 U.S.C. § 310; 47 CFR § 27.12.

[70] 47 CFR § 27.14(k).

disaggregation,[73] and spectrum leasing.[74] We seek comment on this proposal and on certain other part 27 rules that may be appropriate to apply to 12.7 GHz band licensees, or whether there are any aspects of our general part 27 service rules that should be modified to accommodate the particular characteristics of the 12.7 GHz band. In addition, small entities and other future 12.7 GHz band licensees will have to comply with service-specific requirements for the band addressing eligibility, mobile spectrum holdings policies, license term, performance requirements, renewal term construction obligations, and other licensing and operating rules, some of which include reporting and recordkeeping obligations.

22. *Alternatives for Sharing the Band.* The sharing methods that have been proven for white space devices and Citizens Broadband Radio Service (CBRS), in conjunction with new or developing sharing technologies, may be used in the 12.7 GHz band to maximize the use of spectrum. Accordingly, the *Notice* seeks comment on such methods as well as on using an automated spectrum management system such as the Automated Frequency Coordination (AFC) systems used in the 6 GHz band or spectrum access systems used in CBRS as a method to enable spectrum sharing in the 12.7 GHz band as an alternative to relocating incumbents or repacking the band.

23. *Eligibility, License Term and Renewal.* An open eligibility standard has been proposed for licensing in the 12.7 GHz band along with a 10-year initial term for new licenses. The Commission also proposes to apply our general part 27 renewal requirements for wireless licenses as the renewal standard for the 12.7 GHz as the Commission did in the 3.7 GHz Service and the 3.5 GHz band orders.

24. *Performance Requirements.* The *Notice* seeks comment on requiring a 12.7 GHz band licensee, deploying mobile or point-to-multipoint service in accordance with our part 27 rules, to provide reliable signal coverage and offer service to at least 30% to 45% of the population in each of their license areas within five years of their license issue date (interim performance benchmark), and to at least 60% to 80% of the population in each of their license areas within ten years from the license issue date (final performance benchmark). For licensees deploying point-to-point service, the *Notice* seeks comment on requiring them to demonstrate within five years of the license issue date (interim performance benchmark) that they have four links operating and providing service, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, a licensee deploying point-to-point service would need to demonstrate that it has at least one link in operation and providing service, either to customers or for internal use, per every 67,000 persons within a license area. We propose to require licensees deploying point-to-point service to demonstrate within ten years of the license issue date (final performance benchmark) that they have eight links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, we propose to require a licensee deploying point-to-point service to demonstrate it is providing service and has at least two links in operation per every 67,000 persons within a license area.

25. While the *Notice* seeks comment on performance benchmarks based on population coverage applicable for a range of fixed and mobile services, the *Notice* recognizes that 12.7 GHz licenses have flexibility to provide services potentially less suited to a population coverage metric. In particular, licensees providing Internet of Things-type (IoT-type) fixed and mobile services may benefit from an alternative performance benchmark metric. To account for this, we propose that licensees providing IoT-type services would have flexibility to demonstrate that they offer geographic area coverage of at least

(Continued from previous page)

[71] *Id.* § 1.949.

[72] *Id.* § 1.953.

[73] *Id.* § 1.950.

[74] *Id.* § 1.9001 *et seq*.

25% to 35% of the license area at the interim (five-year) performance benchmark, and geographic area coverage of at least 50% to 65% of the license area at the final (ten-year) performance benchmark.[75]

26. Along with performance benchmarks, the Notice seeks comment on which penalties will most effectively ensure timely build-out. Specifically, the *Notice* states that, in the event a licensee fails to meet the first performance benchmark, the licensee's final benchmark and license term would be reduced by two years, thereby requiring it to meet the final performance benchmark two years sooner (at eight years into the license term) and reducing its license term to eight years. If a licensee fails to meet the final performance benchmark for a particular license area, its authorization for each license area in which it fails to meet the performance requirement shall terminate automatically without Commission action. We seek comment on how, in the event a 12.7 GHz band licensee's authority to operate terminates, its spectrum rights should become available for reassignment pursuant to the licensing framework we adopt for this band. We also seek comment on whether, consistent with the Commission's rules for other part 27 licenses, we should require that any 12.7 GHz band flexible use licensee that forfeits its license for failure to meet its performance requirements be precluded from regaining that license. Finally, we seek comment on other performance requirements and enforcement mechanisms that would effectively ensure timely buildout.

27. *Compliance Procedures*. In addition to compliance procedures applicable to all part 27 licensees, including the filing of electronic coverage maps and supporting documentation, the *Notice* proposes that such electronic coverage maps must accurately depict the boundaries of each license area in the licensee's service territory. If a licensee does not provide reliable signal coverage to an entire license area, the *Notice* proposes that its map must accurately depict the boundaries of the area or areas within each license area not being served. Further, the *Notice* proposes that each licensee also must file supporting documentation certifying the type of service it is providing for each licensed area within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology. We seek comment on these proposals. We also seek comment on whether small entities face any special or unique issues with respect to the transition such that they would require additional time to comply.

28. *Mobile Spectrum Holdings and Initial Licensing.* Small entities could be impacted by additional requirements pursuant to our request for comment on how to address spectrum holdings issues involving the 12.7 GHz band. We also seek comment on whether or not to include the 12.7 GHz band in the total spectrum screen or in a separate spectrum screen; on how to address spectrum aggregation issues in the initial licensing of this band; and, on whether there should be a limit on the amount of 12.7 GHz band spectrum held by a single entity at the licensing stage.

29. *Technical Rules.* Small entities and other licensees would also be subject to certain technical rules established to maximize flexible use of the 12.7 GHz band spectrum while minimizing the impact on adjacent band incumbents, consistent with the public interest. In that context, the *Notice* proposes to adopt the same power limits that are applied to UMFUS operations and it seeks comment on whether incumbent satellite services and new terrestrial mobile services can coexist if the latter will be subject to these power limits.

[75] *See, e.g.,* 47 CFR §§ 27.14(v)(2) (requiring a 3.7 GHz Service licensee providing Internet of Things service to offer geographic area coverage of 35% of the license area within 8 years of initial grant and geographic area coverage of 65% of the license area within 12 years of initial grant); 27.14(w)(1)(iii) (requiring a 3.45 GHz Service licensee providing Internet of Things service to offer geographic area coverage of 35% of the license area within 4 years of initial grant and geographic area coverage of 65% of the license area within 8 years of initial grant); 47 CFR §§ 30.103, 30.104(b) (requiring a UMFUS licensee providing Internet of Things or other services deployed along non-traditional lines to offer geographic area coverage of 25% of the license area within 10 years of initial grant).

30. For out-of-band-emissions, the *Notice* proposes that emissions be kept to a level that will provide protection to incumbent services in adjacent bands, while allowing the full use of the new band, and additionally proposes to adopt a requirement that the conductive power or the total radiated power of any emission outside a licensee's frequency block shall be −13 dBm/MHz or lower. Further, the *Notice* seeks comment on whether additional technical protection criteria, beyond out-of-band-emission limits, are necessary to ensure effective coexistence with adjacent band FSS operations. To implement field strength limit at market boundaries, the *Notice* proposes to adopt a -77.6 dBm/m^2/MHz power flux density limit at the service-area boundaries. The *Notice* also proposes that fixed and mobile operations be subject to international agreements with Mexico and Canada.

31. To comply with the proposed rules in the *Notice*, small entities may be required to hire attorneys, engineers, consultants, or other professionals. In particular, for small entities that are not existing operators and do not have existing staffing dedicated to regulatory compliance, engineering and legal expertise may be necessary to make the requisite filings and to demonstrate compliance with the proposed performance obligations. At this time, while the Commission cannot quantify the cost of compliance with the proposed rule changes, we note that several of the proposed changes are consistent with and mirror existing policies and requirements used for other part 27 flexible use licenses. Therefore, small entities with existing licenses in other bands may already be familiar with such policies and requirements and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply if similar requirements are adopted for this band. We also note that for most of the proposals and requests for comments in the *Notice,* the Commission also requests cost-benefit analyses. The Commission expects that the information it receives in comments and through cost-benefit analyses will help it identify and evaluate all relevant matters associated with the proposed reallocation and the relocation of public safety operations out of the band, including compliance costs and other burdens on small entities.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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."[76]

33. In the *Notice*, the Commission seeks to identify potential opportunities for additional flexible access—particularly for wireless broadband services—in the 12.7 GHz band. Throughout the *Notice*, we considered the economic impact the proposed rules could have on small businesses. For example, we considered if there were particular instances where certain parameters – such as use of smaller license areas – could help small businesses. The use of smaller license areas could potentially assist those small entities that favor shared licensing regimes, and also could help promote rural deployments by facilitating access to spectrum by small and regional service providers and beyond.[77]

34. The Commission also considered applying ten-year license terms for any licensees issued in the 12.7 GHz band. This approach specifically considers the potential impact to small entities, as they must allocate resources carefully over the length of their license term. Moreover, as small entities tend to have more limited funds, should they be required to compete at auction for a particular license, the

[76] 5 U.S.C. § 603(c)(1)-(4).

[77] *See supra* at para. 102.

certainty of a longer license term would provide licensees with sufficient incentive to make the long-term investments necessary for compliance. In the *Notice*, we seek comments on this matter.

35. With respect to our proposal in the *Notice* to protect only those BAS and CARS stations licensed in ULS and COALS for which the licensee timely files the certification required in the *Order*, to minimize burdens on small and other entities, the Commission exempted from the certification requirement 12.7 GHz band licenses for which the licensee has filed an application in ULS and COALS on or after January 1, 2021. Further, to minimize the economic impact for any small entity that is required to be repacked to a smaller portion of the 12.7 GHz band, the date that the Commission will set for mobile BAS/CARS operators to cease operations in this band will be set to provide them with enough notice to allow them to relocate without causing disruption to their services. Likewise, the sunset period for incumbent FS operations could potentially be set to provide additional time in order to aid small entities.

36. To assist with the Commission's evaluation of the economic impact on small entities that may result from the actions and alternatives that have been proposed in this proceeding, the *Notice* seeks alternative proposals and requests information on the potential costs of such alternatives to licensees. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Notice*, including costs and benefits information. Alternative proposals and approaches from commenters would also help the Commission further minimize the economic impact on small entities. The Commission's evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities from the final rules that are ultimately adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

37. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Expanding Flexible Use of the 12.2-12.7 GHz Band*, Report & Order and FNPRM, WT Docket No. 20-443; *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, NPRM and Order, GN Docket No. 22-352 (May 18, 2023)

Just a few weeks ago I joined the National Science Foundation to discuss 6G wireless and the potential that it holds. That's right—6G. Just like with the early days of 5G, 6G discussions have started with big ideas and big goals. And just like in the early days of 5G, the scrum for 6G is already underway. We are seeing countries around the world launching programs, projects, and alliances to ensure their foothold in the next generation of wireless technology.

Of course, you could say, on good authority, that no one knows yet with precision what 6G will entail—and you would be right. But if we have learned anything from our experience rolling out 5G, it is that wireless policy matters for economic and national security. That is true in the United States, and it is true globally.

It is also true that fortune favors the bold. So today we identify more than 1000 megahertz of prime mid-band spectrum for new and innovative use. These are airwaves in the 12.2-13.25 GHz band, which puts them right in the middle of the 7-16 GHz band we have already identified as the sweet spot for the 6G era. We are the first country in the world to identify these bands for new wireless use—and take action.

What does this more than 1000 megahertz of spectrum look like? We have ideas today. We believe these airwaves can be optimized with a mix of licensed, unlicensed, and space-based services.

First, we take action to ensure the present and future of satellite services in the 12.2-12.7 GHz band. We recognize that millions of people rely on services in this band—and we want to see that continue. But we also realize there may be additional potential in these airwaves, so we are exploring ways to also use this mid-band spectrum for fixed licensed and unlicensed terrestrial services.

Second, we identify the 12.7-13.25 GHz band as a prime candidate for new mobile use. So we explore how to put it in the pipeline for new wireless broadband.

Count this more than 1000 megahertz as an investment in our wireless future. It is an investment in our leadership in 5G, 6G, and beyond. But back to the here and now. Because all of our planning for a bold future requires that we address something in the here and now. For us to be successful, we need to have Congress reauthorize the spectrum auction authority of the Federal Communications Commission. For thirty years the agency has held this authority, which it uses to distribute airwaves for development nationwide. The ongoing lapse in this authority has immediate consequences for 5G and could soon exact a toll on our 6G leadership. In the past Congress has always extended our auction authority without interruption. That didn't happen this time around and we need to fix it—stat. That's because restoring this authority will provide the United States with the strongest foundation to compete in a global economy, counter our adversaries' technology ambitious, and safeguard our national security.

Thank you to the agency staff who worked on this effort, including Chris Andes, Simon Banyai, Robert Bickford, Stephen Buenzow, Baron Chan, Peter Daronco, Jessica Greffenius, Garnet Hanly, Lamine Kone, Susannah Larson, John Lockwood, Madelaine Maior, Blaise Scinto, Joel Taubenblatt, Natasha Wiltz, and Brian Wondrack from the Wireless Telecommunications Bureau; Bahman Badipour, Michael Ha, Ira Keltz, Matthew Miller, Nicolas Oros, Ron Repasi, and Tom Struble from the Office of Engineering and Technology; Craig Bomberger, Nicolas Copeland, Judith Dempsey, Paul LaFontaine, Catherine Matraves, Giulia McHenry, Gary Michaels, Erik Salovaara, Martha Stancill, and Donald Stockdale from the Office of Economics and Analytics; Deborah Broderson, Doug Klein, Keith

McCrickard, and Bill Richardson from the Office of General Counsel; Greg Boran, Jennifer Gilsenan, Karl Kensinger, Kathyrn Medley, and Merissa Velez from the Space Bureau; Nese Guendelsberger, Dante Ibarra, Ethan Lucarelli, and James McCluckie from the Office of International Affairs; Jim Schlichting from the Public Safety and Homeland Security Bureau; Brendan Holland, Jeffrey Neumann, and Sima Nilsson from the Media Bureau; and Michael Gussow, Joy Ragsdale, and Chana Wilkerson from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Expanding Flexible Use of the 12.2-12.7 GHz Band*, Report & Order and FNPRM, WT Docket No. 20-443; *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, NPRM and Order, GN Docket No. 22-352 (May 18, 2023)

A massive part of our economy today—and our vision for a more prosperous and secure future tomorrow—depends on our ability to pack more information, more users, and more applications into the scarce resource we know as spectrum. Part of the challenge with spectrum policy is that it takes time to develop the frequencies we unlock for consumers. That means we have to lean forward and act early if we want to successfully untap underused spectrum. But it also means that we can't be afraid to adapt to the best available evidence as we steer the ship.

That's what you're seeing today in the 12.2 and 12.7 GHz bands. In 12.2 GHz, we're correcting course in response to the technical evidence. As some of you might remember, I had voiced concerns about whether mobile broadband and satellite services could successfully share this frequency band. But in the interest of supporting efficient spectrum use—and doing more with less—I was open, and in fact committed, to following the engineering wherever it went. Based on the studies filed to date, our engineers have concluded that high-powered mobile broadband, when deployed throughout the country, will interfere with established and emerging satellite services that serve millions of consumers. I would have welcomed a path forward that allowed both services to thrive. But for now, it's time to adapt.

In 12.7 GHz, we're leaning forward. We're proposing specific rules to lift 550 megahertz of underused spectrum off the ground while protecting or transitioning incumbents and fully exploring sharing-based alternatives. While many of the details remain undecided, there is one thing this item makes abundantly clear. The best way to get this spectrum into the hands of users could very well be an auction. We need our authority to hold one restored.

I thank the Commission staff who developed this item. It has my full support.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Expanding Flexible Use of the 12.2-12.7 GHz Band*, Report & Order and FNPRM, WT Docket No. 20-443; *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, NPRM and Order, GN Docket No. 22-352 (May 18, 2023)

I am happy to support today's item. The Report and Order makes the right policy call by protecting NGSO FSS incumbents who have engaged in significant investment in the 12.2 to 12.7 GHz band. The Report and Order also gets the engineering right, considering both these same incumbents' on-going deployment of state-of-the-art satellite technology and overall trends in earth station design and regulation.

Today's NGSO FSS satellites speak to arrays of electronically steered receivers. Signal rejection within those receivers is frequently achieved very close to the desired reception angle with arrays composed of antennas of limited dynamic range. The power levels and coverage profiles of terrestrial networks risk saturating such arrays with interference from networks of powerful terrestrial transmitters, including via side lobes even when care is taken with terrestrial antenna angles. Barring significant technology developments driving down the price and complexity of individual array elements while driving up quality, this will probably be the case for some time to come. And unless and until we see terrestrial technologies deployed in real-world situations, the FCC has no business betting the store on them by undermining the viability of fixed incumbent services in active deployment at large scale for which there is significant demonstrated public demand.

And while I am hopeful that there is a way to allow satellite and two-way high-power fixed wireless service to coexist in the 12.2 to 12.7 GHz band, I believe the FCC needs to be sure that it is not putting the cart before the horse and that it protects incumbents. That is why I am grateful that my colleagues agreed to include language in the Further Notice that impresses upon parties who comment in this proceeding an obligation to provide clear and detailed technical and operational information, including studies—preferably real-world studies—that support these proposals. Without such proposals, the FCC will never emerge from the quagmire of incommensurable, contradictory technical proposals that are laced with advocacy—as we saw with the record in response to the 2021 12.2 to 12.7 GHz NPRM.

I am also happy to support the proposals made in today's 12.7 to 13.2 GHz NPRM. A high-power exclusive-use licensing approach makes the most sense in a band where there are few incumbents who can be easily relocated without the need for spectrum sharing—which is otherwise the preferred approach in congested spectrum bands. I look forward to a fulsome record.

Finally, I would like to thank the staff WTB and OET for their hard work on this item.

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

In the Matter of	)	
	)	
Advanced Methods to Target and Eliminate Unlawful Robocalls	)	CG Docket No. 17-59
	)	
	)	
Call Authentication Trust Anchor	)	WC Docket No. 17-97

SEVENTH REPORT AND ORDER IN CG DOCKET 17-59 AND WC DOCKET 17-97, EIGHTH FURTHER NOTICE OF PROPOSED RULEMAKING IN CG DOCKET 17-59, AND THIRD NOTICE OF INQUIRY IN CG DOCKET 17-59

Adopted: May 18, 2023 **Released: May 19, 2023**

Comment Date (30 days after date of publication in the Federal Register)
Reply Comment Date (60 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. Frustration and anger at unwanted robocalls is something we all agree on. Many of us no longer answer calls from unknown numbers and, when we do, all too often find them annoying, harassing, and possibly fraudulent. Consumers are not the only losers when this happens; legitimate callers have a hard time completing the calls consumers do want to receive. Over the last several years, the Commission has made significant strides to protect consumers, employing a multi-pronged approach to this complex problem because there is no "silver bullet" fix. In this Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, we continue our efforts by expanding certain rules to protect all American consumers from illegal calls and seeking comment on other options to further the cause.

2. We do so recognizing certain foundational principles: providing greater choice to consumers as to what calls reach their phones while also protecting them from illegal calls; making it easier to identify bad actors, whether callers or voice service providers,[1] and improving faith in caller ID; and holding voice service providers responsible as the first line of defense against these calls and ensuring that they are not shielding callers placing illegal calls from detection and enforcement.

3. We begin by extending several requirements adopted in May 2022 for gateway providers[2] to other voice service providers to ensure even greater coverage for consumers. First, we extend the 24-hour traceback requirement to cover all voice service providers in the call path. Second, we enhance the existing requirement to effectively mitigate illegal traffic when notified by the Commission to require originating providers to block this traffic and make it clear that, while terminating and non-gateway

[1] For purposes of this *Seventh Report and Order, Eighth Further Notice, and Third Notice of Inquiry*, we use the definition of "voice service provider" that the Commission adopted in the *July 2020 Call Blocking Order*. Specifically, "voice service provider" means any entity originating, carrying, or terminating voice calls through time-division multiplexing (TDM), Voice over Internet Protocol (VoIP), or commercial mobile radio service (CMRS). *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7615 n.3 (2020) (*July 2020 Call Blocking Order*). As the Commission explained there, this definition is consistent with the use of this term in previous call-blocking actions and existing call-blocking rules, but is more extensive than the definition of "voice service" in section 4 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act and in the Commission's work on caller ID authentication; that definition does not include intermediate providers. *See* TRACED Act § 4(a)(2) (codified at 47 U.S.C. § 227b(a)(2)) (2019); *see also 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, 3300-01, Appx. A (2020) (*First Caller ID Authentication Order*). Adopting the narrower definition used in the TRACED Act in this proceeding would create inconsistency with our existing call blocking rules. We use the phrases "originating provider," "gateway provider," "intermediate provider," and "terminating provider" to mean "originating voice service provider," "gateway voice service provider," "intermediate voice service provider," and "terminating voice service provider," respectively.

[2] *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 19-59, Fifth Report and Order in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59 & Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37, at 10-50, paras. 19-121 (May 20, 2022) (*Gateway Provider Order and Further Notice*).

intermediate providers are not generally required to block, they are required to respond and provide accurate information regarding where they received the traffic. We similarly require voice service providers immediately downstream from a provider that fails to comply with the Commission's directive to block their traffic. Finally, we expand our know-your-upstream-provider requirement to include all voice service providers. We also update the information that voice service providers must file in the Robocall Mitigation Database and commit to in their filing and mitigation plan to reflect the new traceback requirements. Taken together, these expanded requirements will help identify bad actors more quickly and make clear that voice service providers are responsible for the calls they originate, carry, or transmit.

4. Next, we propose and seek comment on several options to further enhance consumer choice, increase consumer trust in caller ID, and hold voice service providers responsible for the calls they originate, carry, or transmit. To provide greater consumer choice and protect all consumers against illegal calls, we propose to require terminating providers to offer analytics-based blocking of calls that are highly likely to be illegal, without charge to consumers. We also propose to require all voice service providers to block calls based on a reasonable do-not-originate (DNO) list. Additionally, we seek comment on the appropriate Session Initiation Protocol (SIP) code to use for immediate notification to callers when calls are blocked based on reasonable analytics. To improve trust in caller ID and ensure consumers have access to information, we seek comment on requiring terminating providers that choose to display caller ID authentication status to also provide some version of caller name to call recipients free of charge. To hold voice service providers responsible, we propose to set a base forfeiture for failure to comply with the requirement that voice service providers take affirmative, effective measures to prevent new and renewing customers from originating illegal calls.

5. Finally, we seek comment on whether and how the Commission can leverage technologies currently in use or in development to combat illegal calls, including honeypots. We also seek comment on the status of call labeling, including whether and how the Commission could improve the call labeling ecosystem.

II. BACKGROUND

6. *An Ongoing Problem.* Despite progress made by the Commission, law enforcement, and industry to combat them, consumers continue to receive an unacceptably high number of unwanted and illegal calls. In fact, these calls continue to be the Commission's top source of consumer complaints.[3] Still more complaints are filed with the Federal Trade Commission (FTC).[4] One industry estimate indicates that the average U.S. consumer receives 14 spam or fraud calls per month.[5] While some of these calls may be simple annoyances, others lead to significant harm, including financial loss.[6] Stopping these

[3] The Commission received approximately 157,000 in 2020, 164,000 in 2021, 119,000 in 2022, and 36,000 in 2023 as of May 15, 2023. FCC, *Consumer Complaint Data Center*, https://www.fcc.gov/consumer-help-center-data (last visited May 16, 2023). Multiple factors can affect these numbers, including outreach efforts and media coverage on how to avoid unwanted calls. Complaint numbers declined significantly during the first four months of the COVID-19 pandemic, reducing the total number of complaints the Commission received in 2020.

[4] The FTC reports it received over 300,000 complaints per month about illegal calls, especially robocalls, in the first three quarters of fiscal year 2021, in additional to approximately 175,000 complaints about unwanted calls that year. FTC, Biennial Report to Congress Under the Do Not Call Registry Fee Extension Act of 2007 at 3 (2021), https://www.ftc.gov/system/files/documents/reports/biennial-report-congress-under-do-not-call-registry-fee-extension-act-2007/p034305dncreport.pdf.

[5] Hiya, State of the Call 2023 at 7 (2023), https://www.hiya.com/state-of-the-calll; *see also* YouMail, *Historical Robocalls by Time*, https://robocallindex.com/history/time (last visited March 20, 2023) (showing data from YouMail regarding how many robocalls are placed by month).

[6] The FTC reports that 20% of the fraud reports it received in 2022 had a phone call as the contact method, with another 22% from contact via text message. American consumers reported a total of $798 million lost to fraud via

(continued….)

calls remains one of our top consumer protection priorities.

7. The Commission has taken an incremental, multi-pronged approach to stopping unwanted and illegal calls. In particular, the Commission has focused on three key areas: ensuring that consumers have a say in what calls ring their phones and protecting them from illegal calls; making the source of calls easier to identify through traceback, caller ID authentication, and restoring trust in caller ID; and holding voice service providers responsible for the calls they originate or transmit. Each is essential to stopping bad actor callers constantly seeking to sidestep consumer protections. When illegal calls do get through, the Commission's rules under the Telephone Consumer Protection Act (TCPA) require callers to obtain consent for certain calls, and consumers have a private right of action for violations.[7]

8. *Enhancing Consumer Choice While Protecting All Consumers From Illegal Calls.* Consumers deserve a say in what lawful calls ring their phones. The Commission has taken steps to incentivize, and in some cases require, voice service providers to stop unwanted and illegal calls before the phone ever rings, while ensuring that consumers have a say in what calls they want to receive.[8] While no reasonable consumer would want to receive illegal calls,[9] many lawful calls are still unwanted—and only the consumer knows what calls they want to receive. To ensure that consumers have this say, the Commission has made clear that voice service providers may block unwanted calls on an opt-in or opt-out basis, and has also established a safe harbor for this blocking. The safe harbor protects voice service providers from liability under the Commission's rules if they block calls based on reasonable analytics that incorporate caller ID authentication information where available and are designed to identify unwanted calls on an opt-out basis.[10] The Commission has also addressed calls that are highly likely to be illegal, ensuring that voice service providers can block certain categories of calls without needing consumer consent.[11]

9. Recognizing that even well-calibrated reasonable analytics can lead to blocking errors,

(Continued from previous page)
phone call, with a median loss of $1,400. FTC, Consumer Sentinel Network Data Book 2022 at 12 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf.

[7] 47 CFR §§ 64.1200(a)(1)-(3); *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 Do Not Call rules apply to calls to wireline and wireless phones. *2003 TCPA Order*, 18 FCC Rcd at 14115-16, paras. 165-66.

[8] *See, e.g.*, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9710-21, paras. 10-40 (2017) (*2017 Call Blocking Order*); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4884-88, paras. 26-35 (2019) (*Call Blocking Declaratory Ruling*); *July 2020 Call Blocking Order*, 34 FCC Rcd at 7625-27, paras. 25-34; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15211, 15234-38, paras. 39-47 (2020) (*December 2020 Call Blocking Order*); *Gateway Provider Order and Further Notice* at 37-38, paras 87-91.

[9] *See 2017 Call Blocking Order*, 32 FCC Rcd at 9721, paras. 44-47.

[10] *See* 47 CFR § 64.1200(k)(3); *July 2020 Call Blocking Order*, 35 FCC Rcd at 7625-27, paras. 25-34 (establishing a safe harbor for blocking of calls based on reasonable analytics designed to identify unwanted calls); *see also Call Blocking Declaratory Ruling*, 34 FCC Rcd at 4884-90, paras. 26-42 (making clear that voice service providers can offer opt-out call blocking programs to block unwanted calls).

[11] *See* 47 CFR §§ 64.1200(k)(1)-(2); *2017 Call Blocking Order*, 32 FCC Rcd at 9710-21, paras. 10-40 (permitting voice service providers to block calls from numbers that indicate that the call is highly likely to be illegal); *see also December 2020 Call Blocking Order*, 35 FCC Rcd at 15234-38, paras. 39-47 (expanding the safe harbor for blocking based on reasonable analytics to include calls that are highly likely to be illegal, without requiring consumer consent).

the Commission responded to voice service providers' concerns that they could face liability for erroneous blocking by adopting a safe harbor to ensure voice service providers are protected when their blocking programs meet certain criteria.[12] As an added protection for consumers, voice service providers must also provide, on request, a list of calls blocked on an opt-in or opt-out basis within the last 28 days prior to the request.[13]

10. While reasonable consumers may differ on what calls are wanted, none want to receive illegal calls. The Commission has therefore made clear that voice service providers may block calls that are highly likely to be illegal without consumer consent in certain instances. In the *2017 Call Blocking Order*, the Commission made clear that voice service providers can block calls purporting to originate from certain categories of numbers.[14] Because the numbers in these categories should not originate calls, there is a low risk of blocking wanted calls. In the *Gateway Provider Order and Further Notice,* the Commission took further steps to address the major problem of foreign-originated illegal calls and required gateway providers to block calls with a U.S. North American Number Plan (NANP) number in the caller ID field using a reasonable DNO list.[15] We have also acted to stop illegal robotexts by requiring mobile service providers to block texts based on a reasonable DNO list.[16] That action will stop robotexts that are highly likely to be illegal. And we have sought comment on additional steps we could take to stop more illegal robotexts.[17]

11. Blocking solely based on originating number, while particularly valuable in the case of impersonation scams, is unlikely to block all, or even most, illegal calls. Thus in the *December 2020 Call Blocking Order*, the Commission expanded the safe harbor adopted in the *July 2020 Call Blocking Order* to cover blocking by terminating providers of calls that are highly likely to be illegal, rather than simply unwanted, based on reasonable analytics and without consumer opt-in or opt-out.[18] Along with this expansion of the safe harbor, the Commission adopted processes to ensure that lawful callers can work with voice service providers to stop erroneous blocking.[19] These processes include a requirement for voice service providers that block based on reasonable analytics to provide an immediate notification to the caller.[20]

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[12] 47 CFR §§ 64.1200(k)(3); *July 2020 Call Blocking Order*, 35 FCC Rcd at 7625-27, paras. 25-34 (providing a safe harbor for terminating providers that block unwanted calls on an opt-out basis based on reasonable analytics, which must incorporate caller ID authentication where available, so long as consumers are provided with sufficient information to make an informed decision, analytics are applied in a non-discriminatory, competitively neutral manner, and these services are provided with no additional line item charge to consumers).

[13] 47 CFR § 64.1200(k)(10); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15242-45, paras. 62-70.

[14] *See 2017 Call Blocking Order*, 32 FCC Rcd at 9710-21, paras. 10-40.

[15] The *Gateway Provider Order and Further Notice* made clear that a "reasonable DNO list" may include numbers in any of the categories covered in the *2017 Call Blocking Order* authorization, but that it need not include all numbers in those categories. *Gateway Provider Order and Further Notice* at 37-38, paras. 87-91.

[16] *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 21-402, 02-278, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-21, at 8-12, paras. 16-26 (2023) (*Text Blocking Order*).

[17] *Id.*

[18] *December 2020 Call Blocking Order*, 35 FCC Rcd at 15234-38, paras. 39-47.

[19] 47 CFR §§ 64.1200(k)(8)-(9); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15239-47, paras. 52-78; *see also Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Order on Reconsideration, Sixth Further Notice of Proposed Rulemaking, and Waiver Order, 36 FCC Rcd 17962, 17967-77, paras. 13-35 (2021) (*Transparency and Redress Reconsideration Order*).

[20] 47 CFR § 64.1200(k)(9); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15239-42, paras. 52-61; *Transparency and Redress Reconsideration Order*, 36 FCC Rcd at 17967-77, paras. 13-35.

12. *Identifying Bad Actors and Increasing Trust in Caller ID.* Blocking calls before they reach consumers is not a complete solution to the ongoing problem of illegal calls. Bad-actor callers adapt and may circumvent blocking. So long as these callers reach a few consumers who fall for their scams, the economic incentive to continue to harm and defraud consumers remains. Identifying these callers and the voice service providers that protect them allows us to stop these calls at the source. As we identify bad actors, we also aim to restore consumer trust in Caller ID so they can again feel confident answering their phones. Both the STIR/SHAKEN caller ID authentication framework and the traceback process further these goals.

13. The STIR/SHAKEN caller ID authentication framework is an industry-developed framework to authenticate caller ID and address unlawful spoofing on Internet Protocol (IP) networks.[21] Voice service providers can use STIR/SHAKEN information to decide how to handle a call and what information to display to the call recipient. STIR/SHAKEN attestation can also help industry and law enforcement more quickly identify the originating provider and the caller. The Commission, consistent with Congress's direction in the TRACED Act,[22] required originating and terminating providers to implement STIR/SHAKEN in the IP portions of their voice networks by June 30, 2021,[23] subject to certain exceptions.[24] Originating and terminating providers that have non-IP portions of their networks must either fully upgrade to IP and implement the framework or participate in developing non-IP solutions.[25] In May 2022, the Commission required gateway providers to implement STIR/SHAKEN to authenticate SIP calls that carry a U.S. number in the caller ID field by June 30, 2023.[26] Most recently, we expanded STIR/SHAKEN caller ID authentication requirements to cover certain non-gateway intermediate providers.[27]

14. Traceback, the process of following the call path back to the point of origin, works with STIR/SHAKEN to identify the source of a particular call. Traceback provides information for enforcement, helps inform call blocking analytics, and supplements caller ID attestation information when calls originate on or transit non-IP networks. In July 2020, the Enforcement Bureau named USTelecom's Industry Traceback Group as the registered consortium to conduct private-led traceback efforts (industry traceback consortium).[28] Our rules require all voice service providers to respond to traceback requests from the Commission, civil and criminal law enforcement, and the industry traceback consortium "fully

[21] STIR/SHAKEN caller ID authentication helps confirm that the caller ID is not spoofed, or otherwise provides information regarding what the signing voice service provider knows to be true about the caller and its right to use the number. Protocols developed by the Secure Telephony Identify Revisited (STIR) working group of the Internet Engineering Task Force (IETF) work with the Signature-based Handling of Asserted information using toKENs (SHAKEN) implementation standards created by the Alliance for Telecommunications Industry Solutions (ATIS) and the SIP Forum.

[22] 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).

[23] 47 CFR § 64.6301; *First Caller ID Authentication Order*, 35 FCC Rcd at 3252, para. 24.

[24] 47 CFR §§ 64.6304, 64.6306; *see also Call Authentication Trust Anchor*, WC Docket No. 17-97. Second Report and Order, 36 FCC Rcd 1859, 1876-83, 1897-907, paras. 36-51, 74-94 (*Second Caller ID Authentication Order*).

[25] *Second Caller ID Authentication Order*, 36 FCC Rcd at 1870-75, paras. 24-35.

[26] *Gateway Provider Order and Further Notice* at 22-30, paras. 51-63.

[27] *See Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, at 8-16, paras. 15-27 (2023) (*2023 Caller ID Authentication Order*).

[28] *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 (EB 2020). The Enforcement Bureau selected USTelecom's Industry Traceback Group as the industry traceback consortium in subsequent years as well. *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870 (EB 2022).

and in a timely manner," and gateway providers to respond within 24 hours.[29]

15. *Holding Voice Service Providers Responsible.* Callers may be the ones who place illegal calls, but voice service providers can—and sometimes do—facilitate, or even protect, these bad-actor callers. When bad-actor callers are shielded by bad-actor voice service providers, it is significantly more difficult to stop the calls. The Commission and other law enforcement agencies can only bring enforcement actions against callers they can identify.[30] For this reason, the Commission has taken steps to hold voice service providers responsible for the calls they carry or process and has taken enforcement action against voice service providers that fail to do so.

16. As with its general approach to stopping illegal calls, the Commission has taken a multi-pronged approach to holding voice service providers responsible. First, gateway, originating, and terminating providers that have not fully implemented STIR/SHAKEN must take "reasonable steps" to mitigate illegal robocall traffic, including implementing a robocall mitigation program and filing a description of that program in the Robocall Mitigation Database.[31] Earlier this year, the Commission extended these requirements to non-gateway intermediate providers and *all* originating and terminating providers, including those that have fully implemented STIR/SHAKEN and those that do not have the facilities necessary to implement STIR/SHAKEN.[32] In November 2022, the Enforcement Bureau made the first announcement of removal of a voice service provider from the Robocall Mitigation Database, which requires all U.S.-based intermediate and terminating providers to cease accepting traffic from that provider.[33]

17. Along with the Robocall Mitigation Database requirement, the Commission has required voice service providers to effectively mitigate, and in some cases block, illegal traffic when notified of such traffic by the Commission.[34] First, in the *July 2020 Call Blocking Order*, the Commission established a safe harbor for the blocking of all calls from bad-actor voice service providers.[35] However, while permissive blocking may deter voice service providers that might have otherwise turned a blind eye to callers using their networks to place illegal calls, it is not a complete solution. To make it clear that the Commission will hold voice service providers responsible for illegal calls on their networks, the Commission required voice service providers to effectively mitigate illegal traffic when notified by the

[29] 47 CFR § 64.1200(n)(1); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15227-29, paras. 15-21; *Gateway Provider Order and Further Notice* at 30-33, paras. 65-71.

[30] Callers placing illegal calls may be liable under a number of state and federal statutes, including the Telephone Consumer Protection Act of 1991 or the Truth in Caller ID Act of 2009, depending on the specifics of the call. *See, e.g.*, 47 U.S.C. § 227; 47 CFR §§ 64.1200, 64.1604; 16 CFR pt. 310.

[31] 47 CFR §§ 64.6305(a), (b) (mitigation plan requirements). Notably, gateway providers must commit in their Robocall Mitigation Database certification and in their mitigation plans to respond to tracebacks within the required 24-hour period. *Id*. § 64.6305(d) (Robocall Mitigation Database filing requirements).

[32] *2023 Caller ID Authentication Order* at 16-29, paras. 28-52. Once the extension of this requirement to all voice service providers, including intermediate providers, adopted in the *2023 Caller ID Authentication Order* is effective, all voice service providers will be required to block traffic from upstream providers not in the database. *2023 Caller ID Authentication Order* at 26-27, para. 50. This requirement is already in effect for certain categories of providers. *Second Caller ID Authentication Order*, 36 FCC Rcd at 1904-05, paras. 86-89 (requiring intermediate and terminating providers to block traffic from originating providers not in the database); *Gateway Provider Order and Further Notice* at 19-21, paras. 44-46 (requiring intermediate and terminating providers to block traffic from gateway providers not in the database).

[33] *October 2022 Robocall Mitigation Database Compliance/Removal Actions*, EB-TCD-22-00034406, Public Notice, DA 22-1220 (EB Nov. 22, 2022).

[34] 47 CFR §§ 64.1200(n)(2), (5)-(6).

[35] 47 CFR § 64.1200(k)(4); *July 2020 Call Blocking Order*, 35 FCC Rcd at 7627-31, paras 35-45.

Commission.[36] The Enforcement Bureau has used these rules to hold responsible voice service providers that fail to effectively mitigate illegal traffic.[37] The Commission later built on these rules to require gateway providers to block substantially similar traffic when notified of illegal traffic by the Commission and, if the gateway provider fails to comply, require voice service providers immediately downstream from the gateway provider to block all of that provider's traffic.[38]

18. The Commission has also adopted know-your-customer style rules to ensure that voice service providers take steps to stop illegal calls before they are placed. In the *December 2020 Call Blocking Order*, the Commission required voice service providers to implement affirmative, effective measures to prevent new and renewing customers from originating illegal calls.[39] Additionally, as of January 16, 2023, gateway providers must take reasonable and effective steps to ensure that the voice service provider immediately upstream is not using the gateway provider to carry or process a high volume of illegal traffic onto the US network.[40] Gateway providers must also describe in their Robocall Mitigation Database filing how they are complying with the requirement to know their upstream provider.[41]

19. *Gateway Provider Order and Further Notice*. On May 19, 2022, the Commission adopted the *Gateway Provider Order and Further Notice*, which included a number of requirements for gateway providers and proposed to extend certain requirements to all voice service providers in the call path.[42] It sought comment on: extending our caller ID authentication requirements and robocall mitigation requirements to additional providers; ways to enhance enforcement; clarifying certain aspects of our caller ID authentication rules; and placing limitations on the use of U.S. NANP numbers for foreign-originated calls and indirect number access.[43] The Commission addressed several of these proposals in the *2023 Caller ID Authentication Order*.[44] Here, we address the proposals for the extension of the robocall mitigation requirements found in section 64.1200 of the Commission's rules, including: extending the requirement to respond to traceback requests within 24 hours; further clarifying the requirement to take affirmative, effective measures to prevent new and renewing customers from using the network to originate illegal calls; requiring all voice service providers to block, rather than effectively mitigate, illegal traffic when notified by the Commission; and requiring downstream voice service providers to block calls from non-gateway providers when those providers fail to comply with a Commission directive to block or effectively mitigate. We also make corresponding revisions to our

[36] 47 CFR § 64.1200(n)(2); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15229-32, paras. 22-31.

[37] *See, e.g.*, *FCC Enforcement Bureau Warns All U.S.-Based Voice Service Providers to Avoid or Cease Carriage of Auto Warranty Robocall Traffic from Cox/Jones/Sumco Panama Operation*, Order, EB-TCD-21-00031913, DA 22-784 at 1, para. 1 (EB 2022) (*Sumco Panama Operation Order*).

[38] 47 CFR § 64.1200(n)(5)-(6); *Gateway Provider Order and Further Notice* at 33-37, paras. 74-86.

[39] 47 CFR § 64.1200(n)(3); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15232-33, paras 32-36.

[40] 47 CFR § 64.1200(n)(4); *Gateway Provider Order and Further Notice* at 41-43, paras. 96-101.

[41] *Gateway Provider Order and Further Notice* at 17, para. 37.

[42] *See generally Gateway Provider Order and Further Notice*.

[43] *Gateway Provider Order and Further Notice* at 63-90, paras. 157-232.

[44] For example, we required intermediate providers that receive unauthenticated SIP calls directly from originating providers to authenticate those calls; required all voice service providers, regardless of their STIR/SHAKEN implementation status, to take "reasonable steps" to mitigate illegal robocall traffic, including implementing a robocall mitigation plan and submitting a certification to the Robocall Mitigation Database; expanded the information that all voice service providers must file in the database; and adopted new tools to hold illegal robocallers accountable for violations of our rules. *2023 Caller ID Authentication Order* at 8-47, paras. 14-96.

Robocall Mitigation Database filing rules to bring them in line with these new obligations.[45]

III. REPORT AND ORDER

20. In this item, we extend some of the requirements the Commission adopted in the *Gateway Provider Order and Further Notice* to other voice service providers in the call path. First, we require all voice service providers, rather than only gateway providers, to respond to traceback requests within 24 hours. Second, we extend the requirements to block calls following Commission notification. Finally, we expand the know-your-upstream-provider requirement to cover all voice service providers. We also make other changes to voice service providers' Robocall Mitigation Database filing and mitigation obligations to be consistent with these new rules. Taken together, the expansion of these rules protects consumers from illegal calls, holds voice service providers responsible for the calls they carry, and aids in the identification of bad actors.

A. 24-Hour Traceback Requirement

21. We require all voice service providers, regardless of their position in the call path, to fully respond to traceback requests from the Commission, civil and criminal law enforcement, and the industry traceback consortium within 24 hours of receipt of such a request.[46] This extends the rule the Commission previously adopted for gateway providers to all voice service providers[47] and replaces the existing requirement to respond "fully and in a timely manner."[48] While some commenters opposed the 24-hour requirement in general, none argued that non-gateway providers are less capable of complying with such a requirement.

22. Rapid traceback is essential to identifying both callers placing illegal calls and the voice service providers that facilitate them. Time is of the essence in *all* traceback requests, including domestic-only tracebacks. While gateway providers play a critical role, they are not the only voice service providers with an important role to play. As one commenter noted, voice service providers do not retain call detail records for a consistent period of time, so the traceback process must finish before any voice service providers in the call path seeking to shield bad actors dispose of their records.[49] We therefore agree with commenters that argue a general 24-hour traceback requirement is a prudent measure, with benefits that outweigh the burdens.[50] In particular, we find that the benefits of having a single, clear, equitable rule for all traceback requests outweigh the burdens of requiring a response within 24 hours.[51] Further, the Commission made clear in adopting the existing requirement to respond "fully

[45] *Gateway Provider Order and Further Notice* at 69-72, paras. 176-187.

[46] The 24-hour clock, consistent with our proposal to adopt the clock as adopted for gateway providers, does not start outside of business hours of the local time for the responding office. Requests received outside of business hours as defined in our rules are deemed received at 8:00 a.m. on the next business day. Similarly, if the 24-hour response period would end on a non-business day, either a weekend or a federal legal holiday, the 24-hour clock does not run for the weekend or the holiday in question, and restarts at 12:01 a.m. on the next business day following when the request would otherwise be due. "Business day" for these purposes is Monday through Friday, excluding federal legal holidays, and "business hours" are 8:00 a.m. to 5:30 p.m. on a business day, consistent with the definition of office hours in the Commission's rules. 47 CFR § 0.403; 47 CFR § 64.1200(n)(1)(ii); *Gateway Provider Order and Further Notice* at 30, n.211.

[47] 47 CFR § 64.1200(n)(1)(ii). The Commission sought comment on extending this requirement to all voice service providers in the *Gateway Provider Order and Further Notice*. *Gateway Provider Order and Further Notice* at 69-70, paras. 177-180.

[48] 47 CFR § 64.1200(n)(1)(i).

[49] 51 State AGs Reply Comments at 8-9.

[50] *See, e.g.*, 51 State AGs Reply Comments at 8-9; PACE Comments at 3-4; Telnyx Comments at 2; Youmail Comments at 15-16.

[51] 51 State AGs Reply Comments at 8-9.

and in a timely manner" that it expected responses "within a few hours, and certainly not more than 24 hours absent extenuating circumstances."[52] As a result, this modification is primarily a matter of codifying our existing expectation, rather than significantly modifying the standard.

23. Out of an abundance of caution, the Commission initially limited the strict 24-hour requirement to gateway providers, based on their particular position in the call path and the need for especially rapid responses in the case of foreign-originated calls.[53] Many calls, however, transit multiple U.S.-based intermediate providers' networks after passing through a gateway provider's network, and delay by any of the intermediate providers in responding to traceback requests has the same impact as delay by the gateway provider. When an intermediate provider receives a traceback request, it may not know if the call originated from outside the United States, making it impossible to apply different standards to foreign-originated calls versus domestic calls through the entire call path.

24. We disagree with commenters that argue against a strict 24-hour requirement.[54] While we understand that some smaller voice service providers that have not received previous traceback requests may be unfamiliar with the process,[55] they will have ample time to become familiar before the requirements take effect. Additionally, the Commission adopted rules that require a response from all voice service providers "fully and in a timely manner" in December 2020, more than two years ago. In adopting that rule, the Commission made clear its expectation that responses would be made "within a few hours, and certainly in less than 24 hours absent extenuating circumstances."[56] Voice service providers have therefore had a significant amount of time to improve their processes so that they can respond within 24 hours in the vast majority of cases. Similarly, voice service providers can identify a clear point of contact for traceback requests and provide it to the entities authorized to make traceback requests.[57] By doing so, voice service providers can significantly reduce the risk that traceback requests will be missed or delayed. For those voice service providers for which requests outside of business hours pose a problem,[58] we adopt the same restrictions on the 24-hour clock that the Commission imposed for gateway providers.[59]

25. Consistent with that finding, we decline INCOMPAS' request that we double the response time to 48 hours or allow voice service providers to submit a response indicating that responding requires additional time along with assurances that it will complete the traceback request "in a timely manner."[60] INCOMPAS offers little in the way of support for this proposed doubling of the traceback

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[52] *December 2020 Call Blocking Order*, 35 FCC Rcd at 15228, n.52.

[53] *Gateway Provider Order and Furter Notice* at 30-33, paras. 65-70.

[54] *See, e.g.*, ACA Connects Comments at 8-9; CCA Comments at 4-5; VON Comments at 2; ACA Connects Reply Comments at 4.

[55] ACA Connects Comments at 8-9; ACA Connects Reply Comments at 4.

[56] *December 2020 Call Blocking Order*, 35 FCC Rcd at 15228, n.52.

[57] We will consider limited waivers where a voice service provider that normally responds within the 24-hour time frame has a truly unexpected or unpredictable issue that leads to a delayed response in a particular case or for a short period of time. This may, in some instances, include problems with the point of contact or other delays caused by the request not being properly received. Voice service providers for which this requirement poses a unique and significant burden may apply for a waiver of this rule under the "good cause" standard of section 1.3 of our rules. Under that standard, for example, waivers may be available in the event of sudden unforeseen circumstances that prevent compliance for a limited period or for a limited number of calls. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *see also Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[58] *See, e.g.*, CCA Comments at 6; VON Comments at 2.

[59] 47 CFR § 64.1200(n)(1)(ii); *see also Gateway Provider Order and Further Notice* at 30, n.211.

[60] Letter from Christopher L. Shipley, Executive Director of Public Policy, INCOMPAS, to Marlene H. Dortch. Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (filed May 12, 2023) (INCOMPAS *Ex Parte*).

response time and we are not persuaded that the narrow reasons it does offer cannot be adequately addressed through our waiver process. Additionally, allowing for a "request received" response to obtain further time could allow bad-actor providers to simply delay traceback responses. We are also unpersuaded by other commenters opposing the 24-hour requirement whose arguments were vague, Other objections to the requirement were vague and unsupported, *e.g.,* the requirement "will likely result in increased enforcement activity and expenses for good actors who for legitimate reasons (and on an infrequent basis) may not respond in a timely manner"[61] or is "unnecessary and unwarranted."[62]

26. We further decline to adopt the tiered approach[63] that the Commission sought comment on in the *Gateway Provider Order and Further Notice*.[64] We find that the tiered approach is too complicated; voice service providers and other entities would not easily know when each response is due with a tiered approach. A uniform rule for all types of voice service providers is significantly easier to follow and enforce.[65] While a tiered approach might benefit some smaller voice service providers that receive few requests,[66] the benefits do not outweigh the overall burdens of administering such a complex system. This 24-hour requirement is a clear standard that we believe all voice service providers will be able to implement because for several years they have already complied with the "timely manner" requirement.

27. We are similarly unpersuaded by arguments that the current efficiency of the traceback system, where many voice service providers do respond rapidly, indicates that a strict rule is inappropriate.[67] We applaud the industry for its work at improving traceback and recognize that many, if not most, voice service providers already respond in under 24 hours.[68] There are, however, a large number of voice service providers, and experience indicates that some may not be incentivized to respond without delay. The failure of any one voice service provider to do so presents a potential bottleneck. For those voice service providers that already respond within 24 hours, this requirement presents no new burden; those voice service providers can simply continue what they have been doing. It is voice service providers that do not respond within that timeframe that present a problem, and this requirement puts them clearly on notice that any delaying tactics will not be tolerated in a way that a "timely" requirement does not.

28. Finally, we decline INCOMPAS' request to remove the Commission and civil and criminal law enforcement from the list of entities authorized to make a traceback request under our rules.[69] The Commission has included these entities on the list since it adopted the initial rule in 2020, and voice service providers have not provided evidence that requests from these entities present problems.

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[61] VON Comments at 2.

[62] ACA Connects Comments at 8-9.

[63] The Commission sought comment on a tiered approach based on the number of tracebacks received per month in the *Gateway Provider Order and Further Notice*. Those voice service providers that receive the fewest requests would only have to respond "fully and in a timely manner," those that receive slightly more would need to maintain an average 24-hour response time, and those that receive the most requests would need to respond to all requests within 24 hours. *Gateway Provider Order and Further Notice* at 69, para. 179.

[64] *Id.* at 69-70, paras. 179-80.

[65] *See* Telnyx comments at 2.

[66] *See, e.g.*, VON Comments at 2.

[67] *See, e.g.*, CCA Comments at 4-5; ACA Connects Comments at 8-9.

[68] Industry Traceback Group, Combating Illegal Robocalls at 3 (2021), https://tracebacks.org/wp-content/uploads/2021/08/ITG-Report-Combatting-Illegal-Robocalls.pdf (ITG Robocall Report).

[69] INCOMPAS *Ex Parte* at 2.

The mere fact that "many companies have established processes"[70] to respond to these entities does not justify excluding them in the rule.

B. Mandatory Blocking Following Commission Notification

29. We next extend two of the mandatory blocking requirements adopted in the *Gateway Provider Order and Further Notice* to a wider range of voice service providers. First, we modify the existing requirement for voice service providers to effectively mitigate illegal traffic; we now require all originating providers to block such traffic when notified by the Commission, consistent with the existing requirement for gateway providers.[71] Second, we make it clear that, while terminating and non-gateway intermediate providers are not generally required to block, they are required to respond and provide accurate information regarding the source from which they received the traffic. Finally, we require voice service providers immediately downstream from a bad-actor voice service provider that has failed to meet these obligations to block all traffic from the identified provider when notified by the Commission that the upstream provider failed to meet its obligation to block illegal traffic or inform the Commission as to the source of the traffic.[72]

30. Consistent with the rules the Commission adopted in the *Gateway Provider Order and Further Notice*, we ensure that all voice service providers are afforded due process; the rule we adopt here includes a clear process that allows ample time for a notified voice service provider to remedy the problem and demonstrate that it can be a good actor in the calling ecosystem before the Commission directs downstream providers to begin blocking. This process, adopted for gateway providers in the *Gateway Provider Order and Further Notice,*[73] includes the following steps: 1) the Enforcement Bureau shall provide the voice service provider with an initial Notification of Suspected Illegal Traffic; 2) the provider shall be granted time to investigate and act upon that notice; 3) if the provider fails to respond or its response is deemed insufficient, the Enforcement Bureau shall issue an Initial Determination Order, providing a final opportunity for the provider to respond; and 4) if the provider fails to respond or that response is deemed insufficient, the Enforcement Bureau shall issue a Final Determination Order, directing downstream voice service providers to block all traffic from the identified provider. In the *Gateway Provider Order and Further Notice*, we sought comment on extending this process to all voice service providers.[74]

31. *Blocking Following Commission Notification of Suspected Illegal Traffic.* We first extend the requirement to block and cease carrying or transmitting illegal traffic when notified of such traffic by the Commission through the Enforcement Bureau; in extending the rule, we apply it to originating providers as well as gateway providers. To comply with this requirement, originating providers must block or cease accepting traffic that is substantially similar to the identified traffic on an ongoing basis.[75] Any voice service provider that is not an originating or gateway provider and is notified

[70] *Id.*

[71] *See December 2020 Call Blocking Order*, 35 FCC Rcd at 15229-32, paras. 22-31; *Gateway Provider Order and Further Notice* at 33-37, 70, paras. 74-86, 181-182.

[72] *Id.* at 71-72, para. 187.

[73] *Gateway Provider Order and Further Notice* at 33-37, paras. 74-86. To ensure that originating providers are fully aware of the process, we lay out the process in detail in this *Order*, as the Commission did in the *Gateway Provider Order and Further Notice*.

[74] *Id.*.

[75] In expanding this rule to include originating providers, we revise the existing section 64.1200(n)(5), move it to section 64.1200(n)(2), and remove existing section 64.1200(n)(2) of the rules, which requires all voice service providers to "effectively mitigate" illegal traffic. *See* 47 CFR § 64.1200(n)(2) (2020). Since originating and gateway providers are now required to block identified traffic, and current section 64.1200(n)(5) already requires all other voice service providers to identify the upstream providers from which they received the traffic and, if possible, take steps to mitigate the identified traffic, the obligations in current section 64.1200(n)(2) is now redundant; we see (continued….)

by the Commission of illegal traffic must still identify the upstream voice service provider(s) from which it received the identified traffic and, if possible, take lawful steps to mitigate this traffic.[76] We find that, in most instances, blocking is the most effective means of mitigating illegal traffic and nothing in the record contradicts this conclusion. Further, this modification eliminates potential ambiguity and provides certainty to voice service providers that may otherwise be unsure how to comply.

32. In expanding this requirement, we make clear that nothing in this rule precludes the originating provider from taking steps other than blocking the calls to eliminate this traffic, provided it can ensure that the method has the same effect as ongoing blocking. For example, if the originating provider stops the calls by terminating the customer relationship, it must ensure that it terminates all related accounts and does not permit the customer to open a new account under the same or a different name in order to resume originating illegal calls.[77]

33. The record supports extending this rule and creating a uniform process, rather than treating gateway and originating providers differently.[78] A single, clear standard requiring blocking by the first domestic voice service provider in the call path eliminates possible confusion, better aligns with industry practices,[79] and provides greater certainty to voice service providers while also protecting consumers. Because voice service providers further down the call path from the originator may find it challenging to detect and block illegal traffic, we limit the blocking requirement to originating and gateway providers but still require non-gateway intermediate providers to play their part by identifying the source of the traffic and taking steps, if possible, to mitigate that traffic.[80] By requiring blocking by originating and gateway providers, we properly balance the burden of identifying and blocking substantially similar traffic on an ongoing basis with the benefit to consumers.

34. With these modifications to our rules, all traffic that transits the U.S. network will be subject to our blocking requirements, even if non-gateway intermediate providers are not generally required to block. While we agree with the 51 State AGs that no traffic should be exempt from our blocking mandate, we do not agree that there should be no variation "across provider types or roles."[81] We believe the key is to ensure that *all traffic* is subject to the rule so that bad actors can be identified and stopped. The rule we adopt today holds originating providers responsible for the traffic their customers

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no reason to retain that section. *Compare* 47 CFR § 64.1200(n)(2) (2020) ("Should the notified provider find that the traffic comes from an upstream provider with direct access to the U.S. Public Switched Telephone Network, that provider must promptly inform the Enforcement Bureau of the source of the traffic and, if possible, take steps to mitigate this traffic . . . ."), *with* 47 CFR § 64.1200(n)(5)(i)(B) (2022) ("[I]f [the notified provider] is a non-gateway intermediate or terminating provider for the identified traffic, it must identify the upstream provider(s) from which it received the identified traffic and, if possible, take lawful steps to mitigate this traffic.").

[76] *See* Appendix A, 47 CFR § 64.1200(n)(2)(i)(B). We discuss the obligations of terminating and non-gateway intermediate providers further below. *Supra* para. 35.

[77] To that end, new section 64.1200(n)(2) directs both originating and gateway providers to either block or "cease accepting" the relevant traffic. Appendix A, 47 CFR § 64.1200(n)(2). This does not alter gateway providers' obligations to block, adopted in the *Gateway Provider Order and Further Notice*, as traffic that a gateway provider "ceases to accept" is blocked because it is not allowed to travel further on the network. *Gateway Provider Order and Further Notice* at 33-37, paras. 74-86.

[78] *See, e.g.*, Comcast Comments at 7-9; YouMail Comments at 16-17; ZipDX Comments at 8; 51 State AGs Reply Comments at 9; *see also* CCA Comments at 7 (supporting extension generally, but raising concerns about specific pieces of the requirement).

[79] Comcast Comments at 8.

[80] Comcast Comments at 8-9 ("[T]he farther down the call path a provider is from the origin of the illegal traffic, the more difficult it is for that provider to reliably detect and block that traffic.").

[81] 51 State AGs Reply Comments at 9.

originate.

35. We further decline to remove the requirement to block "substantially similar traffic" as one commenter asks.[82] A rule that only requires an originating provider to block the traffic specifically identified in the initial notice would arguably block no traffic at all, as the Enforcement Bureau cannot identify specific illegal traffic before it has been originated. The requirement to block substantially similar traffic is therefore essential to the operation of the rule.

36. *Obligations of a Terminating or Non-Gateway Intermediate Provider When Notified by the Commission.* Any terminating or non-gateway intermediate provider that is notified under this rule must promptly inform the Commission that it is not the originating or gateway provider for the identified traffic, specify which upstream voice service provider(s) with direct access to the U.S. public switched telephone network it received the traffic from, and, if possible, take lawful steps to mitigate this traffic.[83] Voice service providers are already required to take these steps under our existing rules,[84] reflecting their affirmative obligations to identify and mitigate traffic when notified by the Commission. However, we are concerned that some voice service providers may provide inaccurate information, avoid responding, or continue to facilitate illegal traffic. We make clear that failing to respond or providing inaccurate information[85] is unacceptable; in such cases, the Enforcement Bureau may make use of the downstream provider blocking requirement and move to the Initial Determination Order and Final Determination Order, consistent with the process we discuss further below. We have determined that a uniform set of procedures for all voice service providers reduces the burden of compliance with these rules and ensures due process in the event the Commission pursues enforcement action against providers carrying suspected illegal robocall traffic. Nothing in the record opposes this conclusion.

37. *Downstream Provider Blocking.* We also require blocking by voice service providers immediately downstream from any voice service provider when notified by the Commission that the voice service provider has failed to satisfy its obligations under these rules. This expands our requirement for voice service providers immediately downstream from a gateway provider to block all traffic from the identified provider when notified by the Commission that the gateway provider failed to block.[86] If the Enforcement Bureau determines a voice service provider has failed to satisfy section 64.1200(n)(2), it shall publish and release an Initial Determination Order as described below, giving the provider a final opportunity to respond to the Enforcement Bureau's initial determination. If the Enforcement Bureau determines that the identified provider continues to violate its obligations, the Enforcement Bureau shall release and publish a Final Determination Order in EB Docket No. 22-174 to direct downstream providers to both block and cease accepting all traffic they receive directly from the identified provider starting 30

[82] CCA Comments at 7.

[83] Voice service providers that fail to take available steps to effectively mitigate illegal traffic may be deemed to have knowingly and willfully engaged in transmitting unlawful robocalls. *See, e.g.*, *Sumco Panama Operation Order* at 1, para. 1; *In the Matter Of Urth Access, LLC*, Order, EB-TCD-22-00034232, DA 22-1271 at 1, para. 1 (EB 2022) (*Urth Access Order*). We note that one clearly available tool is our safe harbor that, once the upstream provider has been notified of the identified illegal traffic by the Commission, permits the downstream provider to block all traffic from that upstream provider if the upstream provider fails to effectively mitigate the illegal traffic within 48 hours or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls. 47 CFR § 64.1200(k)(4).

[84] 47 CFR §§ 64.1200(n)(2), (5).

[85] For example, the notified provider informing the Enforcement Bureau it received the traffic from a different voice service provider than the provider that actually sent it the traffic would be inaccurate.

[86] In making these changes, we revise the existing section 64.1200(n)(6) and move it to section 64.1200(n)(3). *Gateway Provider Order and Further Notice* at 34-35, paras. 78-79.

days from the release date of the Final Determination Order.[87]

38. The record supports extending this requirement.[88] We agree with commenters that urge us to limit this requirement to voice service providers immediately downstream from the identified provider.[89] This limitation is consistent with the rule adopted in the *Gateway Provider Order*,[90] and we see no reason to take a different approach here. If the voice service provider immediately downstream from the identified provider complies with our rules, then the calls should never reach any voice service providers further downstream. Further, voice service providers more than one step downstream from the identified provider may not know in real time that the call came from the identified provider, making it unreasonable to require them to block the calls. We also agree that this requirement should include the blocking of all traffic from the identified provider, rather than requiring the immediate downstream voice service provider to determine which calls to block.[91] Because we require the blocking of all traffic from the identified provider, we see no reason to provide detailed information regarding what traffic must be blocked.[92]

39. *Process for Issuing a Notification of Suspected Illegal Traffic*. The Enforcement Bureau shall make an initial determination that the voice service provider is originating, carrying, or transmitting suspected illegal traffic and notify the provider by issuing a written Notification of Suspected Illegal Traffic. The Notification of Suspected Illegal Traffic shall: (1) identify with as much particularity as possible the suspected illegal traffic; (2) provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful;[93] (3) cite the statutory or regulatory provisions the suspected illegal traffic appears to violate; and (4) direct the provider receiving the notice that it must comply with section 64.1200(n)(2)[94] of the Commission's rule s.

40. The Enforcement Bureau's Notification of Suspected Illegal Traffic shall specify a timeframe of no fewer than 14 days for a notified provider to complete its investigation and report its results. Upon receiving such notice, the provider must promptly investigate the traffic identified in the notice and begin blocking the identified traffic within the timeframe specified in the Notification of Suspected Illegal Traffic unless its investigation determines that the traffic is legal.

41. We make clear that the requirement to block on an ongoing basis is not tied to the number in the caller ID field or any other single criterion. Instead, we require the notified provider to block on a continuing basis any traffic that is substantially similar to the identified traffic and provide the Enforcement Bureau with a plan as to how it expects to do so. We do not define "substantially similar

[87] Ignorance of a Final Determination Order's release is not sufficient reason for a downstream provider to fail to block all traffic from the gateway provider.

[88] *See, e.g.*, CCA Comments at 7-8; Comcast Comments at 9-10; NCTA Comments at 3; VON Comments at 3; ZipDX Comments at 10; CCA Reply Comments at 5.

[89] Comcast Comments at 9-10; NCTA Comments at 3.

[90] *Gateway Provider Order* at 34-35, paras. 78-79.

[91] *See, e.g.* VON Comments at 3.

[92] *See, e.g.*, CCA Comments at 7-8.

[93] The notice should include any relevant nonconfidential evidence from credible sources such as the industry traceback consortium or law enforcement agencies.

[94] Though we do not modify the substance of these rules as they apply to gateway providers, the modifications change the relevant rule from section 64.1200(n)(5) and (n)(6) of the Commission's rules to sections 64.1200(n)(2) and (n)(3). Therefore, the Enforcement Bureau will direct an originating provider or gateway provider to comply with section 64.1200(n)(2) rather than (n)(5) after the modification goes into effect. Because the process is identical for both categories of voice service provider, we see no reason to adopt separate rules for each provider type.

traffic" in any detail here because that will be a case-specific determination based on the traffic at issue.[95] If the notified provider is an originating provider, the identity of the caller may be a material factor in identifying whether the traffic is substantially similar. However, an originating provider may not assume, without evidence, that the caller only has one subscriber line from which it is placing calls and must maintain vigilance to ensure that the caller does not use different existing accounts or open new accounts, under the same or a different name, to continue to place illegal calls.[96] If the notified provider is a terminating or non-gateway intermediate provider, it must promptly inform the Commission that it is not the originating or gateway provider for the identified traffic, specify which upstream voice service provider(s) with direct access to the U.S. public switched telephone network it received the traffic from and, if possible take lawful steps to mitigate this traffic.

42. Each notified provider will have flexibility to determine the correct approach for each particular case, but must provide a detailed plan in its response to the Enforcement Bureau so that the Bureau can assess the plan's sufficiency. If the Enforcement Bureau determines that the plan is insufficient, it shall provide the notified provider an opportunity to remedy the deficiencies prior to taking further action. We will consider the notified provider to be in compliance with our mandatory blocking rule if it blocks traffic in accordance with its approved plan. The Enforcement Bureau may require the notified provider to modify its approved plan if it determines that the provider is not blocking substantially similar traffic. Additionally, if the Enforcement Bureau finds that the notified provider continues to allow suspected illegal traffic onto the U.S. network, it may proceed to an Initial Determination Order or Final Determination Order, as appropriate.

43. *Provider Investigation.* Each notified provider must investigate the identified traffic and report the results of its investigation to the Enforcement Bureau in the timeframe specified in the Notification of Suspected Illegal Traffic, as follows:

- If the provider's investigation determines that it served as the originating provider or gateway provider for the identified traffic, it must block the identified traffic within the timeframe specified in the Notification of Suspected Illegal Traffic (unless its investigation determines that the traffic is not illegal) and include in its report to the Enforcement Bureau: (1) a certification that it is blocking the identified traffic and will continue to do so; and (2) a description of its plan to identify and block substantially similar traffic on an ongoing basis.
- If the provider's investigation determines that the identified traffic is not illegal, it shall 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. Absent such a showing, or if the Enforcement Bureau determines based on the evidence that the traffic is illegal despite the provider's assertions, the identified traffic will be deemed illegal.
- If the provider's investigation determines it did not serve as an originating provider or gateway provider for any of the identified traffic, it shall provide an explanation as to how it reached that conclusion, identify the upstream provider(s) from which it received the identified traffic, and, if possible, take lawful steps to mitigate this traffic.[97] If the notified provider determines that the traffic is not illegal, it must inform the Enforcement Bureau and explain its conclusion within the

[95] We note that each calling campaign will have unique qualities that are better addressed by tailoring the analytics to the particular campaign on a case-by-case basis. We nevertheless encourage originating providers to consider common indicia of illegal calls including, but not limited to: call duration; call completion ratios; large bursts of calls in a short time frame; neighbor spoofing patterns; and sequential dialing patterns.

[96] Additionally, we strongly encourage any voice service provider that has been previously notified of illegal traffic as an originating provider to notify the Commission if it has reason to believe that the caller has moved to a different originating provider and is continuing to originate illegal calls.

[97] Such steps could include, for example, enforcing contract terms or blocking the calls from bad-actor providers consistent with the safe harbor found at 47 CFR § 64.1200(k)(4).

specified timeframe.

44. *Process for Issuing an Initial Determination Order*. If the notified provider fails to respond to the notice within the specified timeframe, the Enforcement Bureau determines that the response is insufficient, the Enforcement Bureau determines that the notified provider is continuing to originate, carry, or transmit substantially similar traffic onto the U.S. network, or the Enforcement Bureau determines based on the evidence that the traffic is illegal despite the provider's assertions, the Enforcement Bureau shall issue an Initial Determination Order to the notified provider stating its determination that the provider is not in compliance with section 64.1200(n)(2). This Initial Determination Order must include the Enforcement Bureau's reasoning for its determination and give the provider a minimum of 14 days to provide a final response prior to the Enforcement Bureau's final determination as to whether the provider is in compliance with section 64.1200(n)(2).

45. *Process for Issuing a Final Determination Order.* If the notified provider does not adequately respond to the Initial Determination Order or continues to originate substantially similar traffic, or the Enforcement Bureau determines based on the evidence that the traffic is illegal despite the provider's assertions, the Enforcement Bureau shall issue a Final Determination Order. The Enforcement Bureau shall publish the Final Determination Order in EB Docket No. 22-174 to direct downstream providers to both block and cease accepting all traffic they receive directly from the identified provider starting 30 days from the release date of the Final Determination Order. The Final Determination Order may be adopted up to one year after the release date of the Initial Determination Order and may be based on either an immediate failure to comply with section 64.1200(n)(2) or a determination that the provider has failed to meet its ongoing obligation to block substantially similar traffic under that rule.

46. Each Final Determination Order shall state the grounds for the Enforcement Bureau's determination that the identified provider has failed to comply with its obligation to block illegal traffic and direct downstream providers to initiate blocking 30 days from the release date of the Final Determination Order. A provider that chooses to initiate blocking sooner than 30 days from the release date may do so, consistent with our existing safe harbor in section 64.1200(k)(4).

47. *Safe Harbor.* We extend the limited safe harbor from liability under the Communications Act or our rules, which the Commission adopted in the *Gateway Provider Order*,[98] to include any voice service provider that inadvertently blocks lawful traffic as part of the requirement to block substantially similar traffic in accordance with the originating provider's approved plan. The record supports extending this safe harbor to protect voice service providers that take steps to prevent illegal calls from reaching consumers and we see no reason not to provide this protection.[99]

48. *Protections for Lawful Callers*. Consistent with our existing blocking rules, voice service providers must never block emergency calls to 911[100] and must make all reasonable efforts to ensure that they do not block calls from public safety answering points (PSAPs) and government emergency numbers.[101] We decline to adopt additional transparency and redress requirements at this time or extend any other existing requirements that would not already apply to the blocking mandates we adopt today. These rules require the Commission to direct which types of calls voice service providers should block, so the blocking provider is not in a position to provide redress. We did not receive specific comment on the need for additional protections for lawful calls.

[98] *Gateway Provider Order and Further Notice* at 36, para. 83.

[99] Comcast Comments at 9; VON Comments at 3; YouMail Comments at 3.

[100] 47 CFR § 64.1200(k)(5).

[101] 47 CFR § 64.1200(k)(6).

C. "Know Your Upstream Provider"

49. We require all voice service providers accepting traffic from an upstream provider to take steps to "know" that immediate upstream provider. This extends our existing requirement for gateway providers[102] to all voice service providers; it holds all voice service providers in the call path responsible for the calls that transit their networks. Specifically, we require every voice service provider to take reasonable and effective steps to ensure that the immediate upstream provider is not using it to carry or process a high volume of illegal traffic.[103] We therefore agree with commenters urging us to adopt a rule that would hold all providers in the call path responsible for the traffic that transits their network.[104] We agree with USTelecom that the best method to do so is by adopting a know-your-upstream-provider requirement.[105]

50. We find that, while intermediate providers may be unable to identify the calling customer with sufficient accuracy to know whether they are placing illegal calls, the Commission cannot permit them to "intentionally or negligently ignore red flags from their upstream providers."[106] As YouMail noted, "the goal of every network should be to transit only legal calls."[107] Extending this requirement to every voice service provider that receives traffic from an upstream provider, rather than solely to gateway providers, ensures that *all* voice service providers in the call path are responsible for keeping illegal traffic off the U.S. network. Consistent with our existing rules,[108] we do not require voice service providers to take specific, defined steps to meet this requirement, and instead allow each voice service provider flexibility to determine the best approach for its network, so long as the steps are effective. In general, we expect voice service providers will need to exercise due diligence before accepting traffic from an upstream provider, and may want to collect information such as "obtaining the [voice service provider's] physical business location, contact person(s), state or country of incorporation, federal tax ID (if applicable), and the nature of the [voice service provider's] business."[109] We do not find that collecting this information is either uniformly necessary or sufficient, and voice service providers may need to take additional steps, such as adopting contract terms that allow for termination and acting on those terms in the event that the upstream provider attempts to use the network to carry or process a high volume of illegal traffic. As the Commission made clear in the *Gateway Provider Order and Further Notice*, we do not expect perfection.[110] However, all voice service providers must take effective steps, and if a voice service provider carries or transmits a high volume of illegal traffic that primarily originates from one or more specific upstream providers, the steps that provider has taken are not effective and must be modified for that provider to be in compliance with our rules. We encourage voice service providers to regularly evaluate and adjust their approach so that that it remains effective.

51. Lastly, in the *2023 Caller ID Authentication Order*, the Commission adopted a

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[102] 47 CFR § 64.1200(n)(4).

[103] In making this change, we revise the existing section 64.1200(n)(5) and move it to section 64.1200(n)(6).

[104] *See, e.g.*, CCA Comments at 8-9; USTelecom Comments at 16-17; ZipDX Comments at 8; USTelecom Reply Comments at 6-8.

[105] USTelecom Comments at 16-17; USTelecom Reply Comments at 6-8. Other commenters supported similar approaches, urging us to either apply to all providers in the call path an affirmative obligation to keep illegal calls off the network or to require a vetting process for all voice service providers, including "intermediate providers serving upstream providers." *See* CCA Comments at 8-9; ZipDX Comments at 8.

[106] USTelecom Comments at 6.

[107] YouMail Comment at 18-19.

[108] *See* 47 CFR § 64.1200(n)(4); *see also* 47 CFR § 64.1200(n)(3).

[109] CCA Comments at 8-9.

[110] *Gateway Provider Order and Further Notice* at 42, para. 99.

requirement that originating, terminating, and intermediate providers describe any procedures in place to know their upstream providers in their robocall mitigation plans.[111] Now that all voice service providers, including intermediate providers, will be required to take reasonable and effective steps to know their upstream providers, all such providers will also be required to describe those steps in their robocall mitigation plans filed in the Robocall Mitigation Database, pursuant to the requirement adopted in the *2023 Caller ID Authentication Order*.[112]

D. Other Issues

52. *Updating Robocall Mitigation Database Certifications to Include Traceback Compliance*. In this Report and Order, we modify 47 CFR § 64.1200(n)(1) to require all voice service providers to respond to traceback requests within 24 hours.[113] Consistent with our rule applicable to gateway providers, which already were required to respond to traceback requests within 24 hours,[114] we now require voice service providers to commit to responding fully and within 24 hours to all traceback requests consistent with the requirements we adopt today in section 64.1200 of our rules, and to include a statement in their Robocall Mitigation Database filings certifying to this commitment.[115] We conclude that these limited rule modifications will ensure that voice service providers' mitigation and filing obligations are in line with their underlying compliance duties, enhance the usefulness of the Robocall Mitigation Database to both the Commission and voice service providers, and promote rule uniformity and administrability. While no party commented on these specific changes, there was significant support to adopt Robocall Mitigation Database filing and mitigation obligations for all voice service providers in the call path.[116] We also update cross-references to section 64.1200 in our Robocall Mitigation Database certification rules to account for the amendments we adopt in this Report and Order.[117]

53. *Effective Measures to Prevent New and Renewing Customers from Originating Illegal Calls*. We decline to further clarify our existing requirement for voice service providers to take affirmative, effective measures to prevent new and renewing customers from using their networks to originate illegal calls, as some commenters request.[118] We agree with commenters that support the

[111] *2023 Caller ID Authentication Order* at 21, para. 40.

[112] Gateway providers are already subject to this requirement under the Commission's rules. 47 CFR § 64.6305(d)(2)(ii).

[113] *See supra* paras. 21-27.

[114] 47 CFR §§ 64.6305(b)(2) (requiring gateway providers to commit to responding to traceback within 24 hours in their robocall mitigation plans), (d)(2)(iii) (requiring gateway provider to certify to this commitment in the Robocall Mitigation Database).

[115] In the *Gateway Provider Order and Further Notice*, we sought comment on expanding certain mitigation plan and Robocall Mitigation Database filing requirements for gateway providers to all providers. *Gateway Provider Order and Further Notice* at 72-73, paras. 188-89 (proposing uniform mitigation obligations for all providers); *id*. at 75-6, para. 197 (proposing uniform Robocall Mitigation Database filing obligations). In the *2023 Caller ID Authentication Order* we expanded Robocall Mitigation Database filing obligations for all providers but noted that were continuing to consider whether to require providers other than gateway providers to respond to traceback requests within 24 hours. *2023 Caller ID Authentication Order* at 23, n. 158.

[116] *See 2023 Caller ID Authentication Order* at 17, para. 30 (noting that "there was significant record support" for expanding the "reasonable steps" mitigation standard, including the obligation to implement a robocall mitigation program and that it "will ensure that every provider in the call chain is subject to the same duty to mitigate illegal robocalls, promoting regulatory symmetry and administrability); *id*. at 20, para. 38 (noting that "there was overwhelming record support" for broadening the Robocall Mitigation Database filing obligation, and that it will "increase transparency and accountability" because "every provider in the call chain is covered by the same basic set of rules").

[117] *See* Appendix A, 47 CFR §§ 64.6305(d)(2)(ii), (e)(2)(ii)].

[118] *Gateway Provider Order and Further Notice* at 70-72, paras. 183-186.

Commission's existing flexible approach under this rule.[119] Flexibility to adapt to changing calling patterns is necessary to avoid giving the "playbook" to bad actor callers, thus an outcomes-based standard is most appropriate.[120] We thus decline to be more prescriptive on the steps voice service providers should take to block, as requested by some commenters.[121]

54. We further decline a commenter's request that we clarify that "adopting a know-your-customer or upstream-provider standard for new or renewing customers satisfies the effective measures standard."[122] The commenter did not define "know-your-customer" and we are not aware of any universally accepted minimum standard in the industry. Without such a definition or minimum standard, there is no guarantee that a process that an individual voice service provider describes as "know-your-customer" would be sufficient. The rule requires "effective" measures;[123] blanket approval of measures voice service providers deem "know-your-customer" clearly does not satisfy this requirement and could lead to voice service providers adopting ineffective processes. We also decline to remove the "new and renewing customer" language, as one commenter requests.[124] This limitation will have less impact the longer the rule is in effect; more contracts will include the new provision as they are renewed over time. This limitation recognizes the challenge of modifying existing, in-force contracts.

55. *Differential Treatment of Non-Conversational Traffic*. We decline to adopt a requirement that originating voice service providers ensure that customers originating non-conversational traffic only seek to originate lawful calls.[125] While many illegal calls are of short duration, it does not follow that all calls of short duration are inherently suspect.[126] We agree with commenters that argue against such requirements[127] and are persuaded that this sort of traffic segmentation is likely to harm wanted, or even

[119] *See, e.g.*, EPIC/NCLC Comments at 7-8; VON Comments at 3.

[120] EPIC/NCLC Comments at 7-8.

[121] *See, e.g.*, CCA Comments at 8-9; YouMail Comments at 18-19; ZipDX Comments at 8; *see also* Letter from Rebekah Johnson, Founder and CEO, Numeracle, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97, 4-10 (filed Oct. 3, 2022) (calling for the Commission to establish rules for know your customer and customer due diligence).

[122] CCA Comments at 8-9.

[123] 47 CFR § 64.1200(n)(3).

[124] ZipDX Comments at 8.

[125] *Gateway Provider Order and Further Notice* at 70-71, paras. 184-186. ZipDX defined "non-conversational traffic" as "traffic that has an average call duration of less than two minutes." Letter from David Frankel, CEO, ZipDX LLX, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, WC Docket No. 17-97 (filed Apr. 19, 2022) at 9; *see also Gateway Provider Order and Further Notice* at 71, para. 185. Under this definition, non-conversational traffic is inherently of short duration. However, because the definition looks at average duration, rather than per-call duration, there is short duration traffic that would not be considered non-conversational.

[126] *See, e.g.*, PACE Comments at 5-6.

[127] *See, e.g.*, CUNA et al. Comments at 2-3 (citing to valuable non-conversational traffic such as emergency alerts and raising concerns that such a rule would block legitimate, lawful calls); PACE Comments at 4-18 (stating that high volume, short duration traffic is not inherently illegal or dangerous, particularly if the call goes to voicemail and urging the Commission and others to "look for multiple characteristics that are commonly associated with illegal traffic" rather than focusing only on duration); Telnyx Comments at 4 (urging against creating "tiers" based on traffic type and stating that doing so would simply move bad actors to other types of traffic while harming callers placing lawful calls); VON Comments at 4 (noting the serious impact on legitimate uses, including medical centers, schools, and two factor authentication); YouMail Comments at 20-21 (discussing the risk that bad actors would "game" the system to avoid such standards and noting that many valuable calls are non-conversational); ABA et al. Reply Comments at 3-5 (noting that non-conversational calls include account-related calls and urging the Commission not to adopt a rule that targets this type of traffic); USTelecom Reply Comments at 11 (agreeing

(continued….)

essential, traffic.[128] In fact, only one commenter urged us to adopt a rule treating non-conversational traffic differently from conversational traffic,[129] and even that commenter acknowledged that not all non-conversational traffic is illegal.[130] Such a rule could, for example, make it impossible for medical centers or schools in rural areas with few voice service providers to find a provider willing to carry their traffic, which may include emergency notifications, appointment reminders, or other important notifications; we will not throw the baby out with the bathwater.

56. Moreover, we do not believe that a strict rule for non-conversational traffic would lead to any real benefit.[131] To do so, we would need to adopt standards for whether calls are "non-conversational" or "conversational," which bad actors could use ensure that their traffic does not meet the criteria for stricter treatment.[132] As a result, not only is the risk of such a rule unacceptably high, but the potential benefit is low.

57. *Strict Liability*. We similarly decline to adopt a strict liability standard for an originating provider when its customer originates illegal calls.[133] The Commission asked about a strict liability standard in the *Gateway Provider Order and Further Notice* in the context of differential treatment of non-conversational traffic,[134] which we have declined to adopt. We disagree with commenters that ask us to adopt this standard more broadly[135] and agree with those who argue strict liability is inappropriate.[136] Protecting consumers from illegal calls cannot come at the cost of blocking high volumes of lawful traffic in order to avoid the possibility that some of those calls might be illegal—which is the behavior many voice service providers would have to undertake if we imposed strict liability.

58. *Public Traceback*. We decline to require that the industry make traceback information

(Continued from previous page)
generally with other commenters that "such proposals would be impractical and could harm legitimate providers and legitimate traffic").

[128] *See, e.g.*, CUNA et al. Comments at 2 (citing the risk to calls such as fraud alerts, school closings, and payment reminders, among others); PACE Comments at 8-9 (noting that such a policy would jeopardize: calls from law-abiding businesses; public opinion polls and political surveys; outreach calls on behalf of state and federal officials and candidates; calls from charities, nonprofits, and religious institutions to donors; and outreach by labor unions); VON Comments at 4 (citing likely issues for medical institutions and schools in finding voice service providers that will carry their legitimate notifications, as well as problems for use cases such as two factor authentication); ABA et al. Reply Comments at 4-5 (noting that banks regularly place valuable calls that would fall under the "non-conversational" threshold).

[129] ZipDX Comments at 8-10; ZipDX Reply Comments at 8-9.

[130] ZipDX Reply Comments at 8.

[131] *See, e.g.*, PACE Comments at 9; Telnyx Comments at 4; YouMail Comments at 20-21.

[132] *See, e.g.*, PACE Comments at 9; YouMail Comments at 20-21. For example, YouMail describes how a bad actor might attempt to "'game' behavioral analytics tools by only transiting long duration calls to targeted lists of potential victims," such as to individuals that are "known to be of an older, more susceptible demographic" and thereby bring their average duration over any threshold we might set. YouMail Comments at 20-21.

[133] *Gateway Provider Order and Further Notice* at 70-71, para. 184. Some commenters urged us to adopt a strict liability standard. *See* EPIC/NCLC Comments at 10-11; ZipDX Comments at 8-9. We rejected similar arguments for strict liability in the *2023 Caller ID Authentication Order*. *2023 Caller ID Authentication Order* at 40, para. 75.

[134] *Gateway Provider Order and Further Notice* at 70-71, para. 184.

[135] EPIC/NCLC Comments at 10-11 (calling for strict liability for the processing of illegal calls for all voice service providers); ZipDX Reply Comments at 9-10 (urging us to adopt a strict liability standard where an originating or intermediate provider has notice that they are facilitating illegal traffic, whether that notice comes from the Commission, a traceback request, another voice service provider, or any other source).

[136] *See, e.g.*, CUNA Comments at 3; INCOMPAS Comments at 13-14; CCA Reply Comments at 4.

publicly available, as one commenter asks.[137] We believe this approach places too much weight on receipt of traceback requests as an indicator that a voice service provider is a bad actor. Voice service providers that handle a large volume of calls, especially as intermediate providers, are likely to receive a high volume of traceback requests even if they are not bad actors. A general rule requiring the publication of traceback information could hamper industry efforts by discouraging voice service providers from initiating traceback requests without law enforcement intervention.[138]

E. Summary of Costs and Benefits

59. The record in this proceeding supports our conclusion in the *Gateway Provider Order and Further Notice* that our proposed rules and actions, some of which we address in this Order, "will account for another large share of the annual $13.5 billion minimum benefit we originally estimated" and that the benefits "will far exceed the costs imposed on providers."[139]

60. In this Order, we reaffirm that all voice service providers are responsible for all calls they originate, carry, or transmit. In doing so, we expand several of our rules to cover a wider group of voice service providers. First, we codify our existing expectation that voice service providers respond to traceback requests within 24 hours[140] by expanding the strict 24-hour requirement we adopted for gateway providers to all providers in the call path. Requiring rapid response to traceback complements our STIR/SHAKEN caller ID authentication rules by making it easier to identify bad actors even where caller ID authentication information is unavailable. This codification is a key piece of our comprehensive approach to combating illegal calls and supports the benefits of that approach without incurring a significant practical cost when compared to our existing requirements.[141]

61. Second, we extend our requirement to block following Commission notification to originating providers and make clear that *any* voice service provider that receives such a notification is required to respond to the Commission and, if it is not an originating or gateway provider, inform the Commission where it got the traffic. If any voice service provider refuses to comply with this requirement, all voice service providers immediately downstream from the non-compliant provider may be required to block all traffic from that provider. Voice service providers must comply with Commission rules, and this rule provides clear, immediate consequences for voice service providers that refuse to do so, even if that voice service provider would be unable to pay a forfeiture. We do not expect

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[137] EPIC/NCLC Comments at 6, 32-33 (urging us to adopt a requirement to make traceback information available to all voice service providers, "enable a market-based methodology for providers to enforce the rules," and "allow legal robocallers to ensure that their calls are not routed through providers with a history of tracebacks"). We also believe this request is outside the scope of this proceeding. We did not seek comment on this matter in the *Gateway Provider Order and Further Notice* and do not have any record supporting such a measure outside of the comments filed by EPIC and NCLC. EPIC/NCLC Comments at 6, 32-33.

[138] Publication of traceback information may be appropriate and beneficial in certain instances, particularly when the information is published in aggregate, rather than tied to individual, specific requests. Nothing here limits the ability of the Commission or another entity to publish such information. As of November 2022, the Industry Traceback Group indicates that it initiates an average of 270 tracebacks per month. Letter from Joshua M. Bercu, Executive Director, Industry Traceback Group, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 20-195, at 1 (filed Nov. 1, 2022). The letter indicates that the originating provider terminates the calling party in approximately 50% of cases and warns the calling party in another 21%. *Id.* at 5. These actions, particularly termination, strongly indicate that at least some originating providers that receive traceback requests are not bad actors, which undercuts the potential justification for public disclosure.

[139] *Gateway Provider Order and Further Notice* at 63, para. 159.

[140] *December 2020 Call Blocking Order*, 35 FCC Rcd at 15228, n. 52.

[141] *See supra* para. 22 ("this modification is primarily a matter of codifying our existing expectation, rather than significantly modifying the standard"). For example, a commenter observed, "the 24-hour response time is not overly burdensome to providers." 51 State AGs Reply Comments at 8-9.

that originating providers will incur significant costs as a result of this rule because action by providers is required only when the Commission notifies the provider. Further, because providers generally adhere to Commission rules, we expect that downstream providers will receive Commission notification to block only rarely. If the Commission were to issue such a blocking notification to a downstream provider, it would benefit consumers by stopping illegal calls while causing disruption to provider relationships and possibly stopping some legal calls. While the disruption of legal calls would harm consumers, we expect this scenario to arise infrequently. The power of this aspect of the rule is that it gives providers strong incentives to comply with our blocking rules. Because illegal calls cause large harms to consumers, stopping even a small share of illegal calls benefits consumers significantly and, as explained above, we expect this rule to have minimal costs. Therefore, we find that the benefits of this rule outweigh its costs.

62. Finally, we expand the know-your-upstream-provider requirement to all voice service providers. This expanded requirement codifies that all voice service providers, regardless of their position in the call path, are responsible for preventing illegal calls. Because voice service providers should already be exercising due diligence by knowing their upstream call providers, this new rule has small costs. It has greater benefits in deterring providers from shirking their due-diligence responsibility.

63. These expanded rules will ultimately prevent illegal calls from ringing consumers' phones, both by deterring callers from placing them in the first instance and by stopping the calls before they reach the consumer. The rules also make bad actors, whether callers or voice service providers, easier to identify. Taken together, these new and expanded rules increase the effectiveness of all of our efforts to combat illegal calls, including our existing affirmative obligations and Robocall Mitigation Database filing requirements. These rules, together with our existing rules, make it easier to identify and stop illegal calls before they reach consumers. As we found previously, an overall reduction in illegal calls will lower network costs by eliminating both unwanted traffic congestion and the labor costs of handling numerous customer complaints,[142] and these new rules contribute to this overall reduction. This reduction in illegal calls will also help restore confidence in the U.S. telephone network and facilitate reliable access to emergency and healthcare services.

64. Although sparse in quantitative estimates, the record in this proceeding supports our conclusion that the benefits of these rules exceed their costs. A more uniform blocking standard will "provide additional benefits and reduce the overall burden" on providers.[143] Extending these rules, originally adopted for gateway providers, to all voice service providers will not be overly costly or burdensome.[144] The incremental costs of compliance with our new rules is "relatively small."[145] Given that robocalls reduce public welfare by billions of dollars annually, even a small percentage reduction in robocalls implies benefits that exceed the costs of our new rules.

F. Legal Authority

65. Our legal authority to adopt these requirements stems from sections 201(b), 202(a), and 251(e) of the Communications Act of 1934, as amended (the Act) as well as from the Truth in Caller ID Act and our ancillary authority. Sections 201(b) and 202(a) grant us broad authority to adopt rules governing just and reasonable practices of common carriers.[146]

66. Our section 251(e) numbering authority provides independent jurisdiction to prevent the abuse of NANP resources; this particularly applies where callers spoof caller ID for fraudulent purposes

[142] *2023 Caller ID Authentication Order* at 44, para. 87; *Gateway Provider Order and Further Notice* at 47, para. 111.

[143] Comcast Comments at 28.

[144] NYPSC Comments at 3.

[145] YouMail Comments at 11.

[146] 47 U.S.C. §§ 201(b), 202(a).

and therefore exploit numbering resources, regardless of whether the voice service provider is a common carrier.[147] Similarly, the Truth in Caller ID Act grants us authority to prescribe rules to make unlawful the spoofing of caller ID information with the intent to defraud, cause harm, or wrongfully obtain something of value.[148] Taken together, section 251(e) of the Communications Act and the Truth in Caller ID Act grant us authority to prescribe rules to prevent the unlawful spoofing of caller ID and abuse of NANP resources by all voice service providers.[149]

67. We further find that these rules reduce the chance of unlawfully spoofed calls reaching consumers and thus are within our authority under the statutes referenced above. In particular, the requirement to respond to traceback requests within 24 hours directly impacts a caller's ability to unlawfully spoof caller ID by making it easier to detect the originator of the call. The other requirements are aimed at curbing the use of NANP numbers (whether spoofed or not) for unlawful purposes as they are focused on mitigating and preventing illegal calls.

68. While we conclude that our direct sources of authority provide an ample basis to adopt our proposed rules for all voice service providers, our ancillary authority in section 4(i)[150] provides an independent basis to do so with respect to providers that have not been classified as common carriers.[151] 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.[152] 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."[153]

69. With regard to the second prong, requiring voice service 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 providers that are not classified as common carriers, originators of illegal calls could circumvent our proposed scheme by sending calls only via providers that have not yet been classified as common carriers.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

70. In the *Report and Order* and the *2023 Caller ID Authentication Order* we made clear that all voice service providers play a key role in stopping illegal calls by extending existing obligations and closing potential loopholes. In this *Further Notice of Proposed Rulemaking,* we propose and seek comment on several additional steps that could ensure that all consumers have access to call blocking

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[147] Interconnected VoIP providers can obtain numbering resources directly under our rules, supporting our claim of authority over these providers. *See, e.g.*, 47 CFR § 52.15(g)(3).

[148] *Id.* § 227(e)(1).

[149] We have long relied on both section 241(e) and the Truth in Caller ID Act as sources of authority for our call blocking rules. *2017 Call Blocking Order*, 32 FCC Rcd at 9727, paras. 61-62; *July 2020 Call Blocking Order*, 35 FCC Rcd at 7637-38, paras. 64-65; *December 2020 Call Blocking Order*, 35 FCC Rcd at 15237-38, para. 47; *Gateway Provider Order and Further Notice* at 48, para. 115.

[150] 47 U.S.C. § 154(i).

[151] We previously found such rules to be covered under our ancillary authority in the *Gateway Provider Order and Further Notice*. *See Gateway Provider Order and Further Notice* at 49, paras. 118-19.

[152] *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).

[153] 47 U.S.C. § 152(a).

solutions, restore trust in caller ID, and hold voice service providers responsible for illegal traffic. First, we propose to require that all terminating providers offer, at a minimum, analytics-based blocking of calls that are highly likely to be illegal on an opt-out basis, without charge. Second, we propose to require that all voice service providers, rather than just gateway providers, block calls based on a reasonable DNO list. Third, we seek comment on the correct SIP Code for providing callers with immediate notification of blocked calls on an ongoing basis. Fourth, we seek comment on whether, and if so how, to require terminating providers that choose to display an indication as to caller ID authentication status to provide some version of caller name to call recipients. Finally, we propose to establish a base forfeiture for any violation of the requirement for voice service providers to take affirmative, effective measures to prevent new and renewing customers from originating illegal calls.

A. Mandatory Blocking Programs to Protect Consumers from Illegal Calls

1. Requiring Opt-Out Analytics-Based Blocking of Calls That Are Highly Likely to be Illegal

71. We propose to require that terminating providers offer analytics-based blocking of calls that are highly likely to be illegal on an opt-out basis without charge to consumers. Our rules currently permit,[154] but do not require, such blocking. As a result, while many terminating providers offer these services, they may not be available to all consumers. We believe that this requirement will better protect all consumers from illegal calls.

72. We seek comment on this proposal. Would our proposal help protect consumers from calls they do not want to receive? The Commission has previously provided a non-exhaustive list of factors that a voice service provider might consider when blocking based on reasonable analytics rather than specifically defining the categories of "highly likely to be illegal" or "unwanted."[155] If we were to adopt our proposal, should we provide further guidance, or does our flexible approach remain appropriate? If we should provide further guidance, what should we include? What lessons can we take from existing analytics-based blocking to ensure any requirement is effective? How can we ensure that bad actors cannot use any guidance we provide to more easily circumvent blocking? We propose to require terminating providers to offer these blocking services 30 days after publication of an Order in the Federal Register; we seek comment on this proposal. Will some providers need more time to implement this requirement because they do not already offer any analytics-based blocking? If so, how long should we allow for implementation?

73. To minimize the burden to terminating providers, we propose to consider analytics-based blocking of calls that are highly likely to be illegal on an opt-out basis to be a minimum standard. Terminating providers that already do more, or that choose to do more, would therefore be in compliance with this requirement. In particular, we recognize that many terminating providers already offer opt-out blocking services. We believe that terminating providers that already block calls that are unwanted based on reasonable analytics on an opt-out basis, consistent with our existing safe harbor at section 64.1200(k)(3),[156] would be in compliance because unwanted calls inherently include calls that are highly likely to be illegal. We seek comment on this belief. Is there any reason that these terminating providers

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[154] 47 CFR §§ 64.1200(k)(3), (k)(11); *Call Blocking Declaratory Ruling*, 34 FCC Rcd at 4884-90, paras. 26-42 (making clear that voice service providers can offer opt-out call blocking programs); *July 2020 Call Blocking Order*, 35 FCC Rcd at 7625-27, paras. 25-34 (establishing a safe harbor for the blocking of calls based on reasonable analytics designed to identify unwanted calls on an opt-out basis); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15234-38, paras. 39-47 (expanding the safe harbor for the blocking of calls based on reasonable analytics to include calls that are highly likely to be illegal without requiring consumers to opt out).

[155] For example, in the *Call Blocking Declaratory Ruling*, the Commission provided a non-exhaustive list of factors such as large bursts of calls in a short timeframe, low average call duration; low call completion ratios, and invalid numbers placing a large volume of calls. *Call Blocking Declaratory Ruling*, 34 FCC Rcd at 4888, para 35.

[156] 47 CFR § 64.1200(k)(3).

would not already be in compliance? If so, are there any modifications we could make to this safe harbor to address this issue? How should we handle a situation where a terminating provider only offers such blocking on an opt-in basis? We believe that more consumers will benefit from blocking that is offered on an opt-out basis, because many consumers who would benefit from blocking will not opt in. Is this correct? Is there any way we could address this issue without requiring terminating providers that offer opt-in blocking to switch to opt-out blocking? Alternatively, is the benefit of requiring these terminating providers to switch to opt-out blocking enough to justify the cost of doing so?

74. Some terminating providers already block calls that are highly likely to be illegal without consumer consent, consistent with our safe harbor under section 64.1200(k)(11).[157] We believe that terminating providers that engage in this blocking would also be in compliance with the mandate we propose today. We seek comment on this belief. Is there any reason we should not consider these terminating providers in compliance? If so, are there any modifications that we should make to the safe harbor to address this? Because blocking without consumer consent would mean that more consumers would benefit than blocking on either an opt-in or opt-out basis, we do not believe there is any reason to require terminating providers to offer consumers the opportunity to opt out when blocking targets calls that are highly likely to be illegal, rather than unwanted. Is this correct? Are there any reasons for us to require the terminating provider to allow consumers to opt out? If we do so, would this create any issues for terminating providers that already block under the existing safe harbor? Do any terminating providers that would be impacted by this modification not offer opt-out blocking of unwanted calls? How might we address these issues if we do take this approach?

75. Terminating providers that block consistent with our existing safe harbors will be protected by those safe harbors when blocking under this proposed rule.[158] We believe the safe harbors provide sufficient protection. We seek comment on this belief. Is there any reason to modify or expand our existing safe harbors to protect terminating providers that block under this rule? If so, what modifications would be appropriate? What impact would these modifications have on lawful calls? If we do adopt certain modifications to our safe harbors, should we modify our rules protecting lawful calls[159] and, if so, how? Finally, we believe that our existing protections for lawful calls are sufficient and propose to extend them to calls blocked under this requirement.[160] We seek comment on this belief and whether there are any other protections we should adopt. Are there any other issues we should consider in adopting such a requirement?

2. Requiring Blocking Based on a Reasonable Do-Not-Originate List

76. We propose to require all voice service providers to block calls using a reasonable DNO list. A DNO list is a list of numbers that should never be used to originate calls, and therefore any calls that include a listed number in the caller ID field can be blocked.[161] Consistent with our requirement for gateway providers for voice calling and mobile wireless providers for text messaging, we propose to allow voice service providers to use any DNO list so long as the list is reasonable and not so limited in scope that it leaves out obvious numbers that could be included with little effort. Specifically, we propose to limit the numbers that can be included on the list to invalid, unallocated, and unused numbers, as well

[157] 47 CFR § 64.1200(k)(11).

[158] 47 CFR §§ 64.1200(k)(3), (11). We do not propose to require terminating providers to comply with the specific rules of the safe harbors in order to comply with our proposed rule, nor do we propose to eliminate the safe harbors.

[159] 47 CFR §§ 64.1200(k)(5)-(6), (8)-(10).

[160] 47 CFR §§ 64.1200(k)(5)-(6), (8)-(10).

[161] *See, e.g.*, *2017 Call Blocking Order*, 32 FCC Rcd at 9709-21, paras. 9-40; *Gateway Provider Order and Further Notice* at 37-38, paras. 87-91.

as numbers for which the subscriber to the number has requested blocking.[162]

77. We seek comment on this proposal. Should the list include any additional categories of numbers, or should we exclude any particular categories? We note that the categories we propose to include are consistent both with the requirement for gateway providers and the Commission's long-standing authorization of this type of blocking,[163] so we are reluctant to change this scope unless it provides a clear benefit to consumers. We therefore seek specific comment on the benefits of any change.

78. As noted in the *Gateway Provider Order and Further Notice*, we do not believe every possible number must be included in a DNO list in order for such a list to be reasonable.[164] Consistent with our rule for gateway providers, we believe that, at a minimum, a reasonable list would need to include any inbound-only government numbers where the government entity has requested the number be included.[165] Additionally, we believe it should include private inbound-only numbers that have been used in imposter scams, when a request is made by the private entity assigned such a number.[166] We seek comment on this approach. Is there any reason to change the minimum scope of what must be included on a reasonable DNO list?

79. Finally, we seek comment on whether it is appropriate to require all voice service providers to block based on a reasonable DNO list, rather than limiting the requirement to certain voice service provider types. Because we do not mandate blocking using a specific list, the content of the list may vary from one voice service provider to another. We therefore believe that broad application of the rule will result in more calls that are highly likely to be illegal being blocked before they reach a consumer. Is this belief correct? Are there any other factors we should consider in determining which voice service providers should be required to block? For example, are there technical limitations that would make it difficult or impossible for voice service providers to implement blocking across the network? If we do limit the blocking requirement to only specific types of voice service providers, what categories of providers should be required to block? For example, should the rule only apply to originating providers, along with gateway providers? We further seek comment on the appropriate implementation timeline for this requirement. Given that this rule will need to be approved through the Paperwork Reduction Act process, does requiring compliance 30 days after publication of a notice of that approval in the Federal Register suffice, or should we allow additional time? Should we consider a different timeline if not all providers are covered by the final rule? Are there any other issues that we should consider?

3. Further Strengthening the Requirements to Block Following Commission Notification

80. In the *Order*, we require originating providers to block illegal traffic when notified by the Commission, as gateway providers are already required to do.[167] While we believe that, in the vast majority of cases, responsibility for blocking illegal calls should fall to originating and gateway providers, we are concerned that requiring terminating or non-gateway intermediate providers to merely respond with information regarding where they received the traffic could leave some loopholes that bad actors might attempt to exploit. For this reason, we propose to require blocking by other voice service providers in certain situations and seek comment on other steps we could take to ensure that bad actors cannot

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[162] 47 CFR §§ 64.1200(k)(1)-(2)(i)-(iii), (o); *2017 Call Blocking Order*, 32 FCC Rcd at 9709-21, paras. 9-40; *Gateway Provider Order and Further Notice* at 37-38, paras. 87-91.

[163] 47 CFR §§ 64.1200(k)(1)-(2)(i)-(iii), (o).

[164] *Gateway Provider Order and Further Notice* at 37, para. 88.

[165] *Id.* at 37-38, para. 89.

[166] *Id.*

[167] *Supra* Section III.B.

circumvent our rules.

81. First, we propose to require a terminating or non-gateway intermediate provider to block if that provider, upon receipt of a Notice of Suspected Illegal Traffic, cannot identify the upstream provider from which it received any or all of the calls. We propose that the terminating or non-gateway intermediate provider be required to block consistent with the original Notice of Suspected illegal traffic, including developing a blocking plan, following the same subsequent steps that originating and gateway providers follow when they are notified of suspected illegal traffic. Second, we propose to allow the Enforcement Bureau to direct a terminating or non-gateway intermediate provider that has received at least one prior Notice of Suspected Illegal Traffic to both block substantially similar traffic and identify the upstream provider from which it received the traffic. Finally, we seek comment on any other scenarios that we should address.

82. *Blocking When Information Regarding the Upstream Provider is Unavailable.* We propose to require terminating and non-gateway intermediate providers to block illegal traffic when notified by the Commission if, for any reason, the provider responds to the Enforcement Bureau that it cannot identify the upstream provider from which it received any or all of the calls identified in the Notice of Suspected Illegal Traffic. As part of this requirement, terminating and non-gateway intermediate providers would be required to block traffic that is substantially similar to the traffic identified in the Notice of Suspected Illegal Traffic. We believe that this requirement is necessary to ensure that *all* traffic on the U.S. network is subject to blocking when the Enforcement Bureau has determined that such traffic is illegal, as well as to avoid situations in which a bad-actor provider would otherwise be shielded from consequences under our existing rules.

83. We seek comment on this proposal. We believe there are two ways the issue could arise. First, a bad-actor provider might intentionally discard the information necessary to identify the upstream provider so that it cannot provide that information to the Enforcement Bureau. Second, a voice service provider that is trying to be a good actor in the ecosystem might receive a Notice of Suspected Illegal Traffic that includes calls for which it no longer has records. Are there any other instances in which a provider would be unable to identify the upstream provider from which it received traffic? Does extending the requirement to block in these cases present a significant burden to terminating or non-gateway intermediate providers? How might we reduce these burdens? Are there any situations in which we should not require blocking even though the notified provider cannot identify the upstream provider(s)? How might we address these situations? We see no reason why voice service providers would not be able to develop a blocking plan and start blocking in response to the initial Notice of Suspected Illegal Traffic, without requiring additional action by the Enforcement Bureau. The voice service provider will know that it cannot provide the identity of the upstream provider from its investigation, and can act on this knowledge more quickly than the Enforcement Bureau. We seek comment on this belief.

84. We propose to require blocking of "substantially similar" traffic, consistent with our rules for originating and gateway providers.[168] Is this standard appropriate for use with terminating and non-gateway intermediate providers, or should we adopt a different standard? Should we provide guidance specific to terminating and non-gateway intermediate providers on meeting this standard, in recognition of the fact that they are further from the source of the call and are not the first point of entry onto the U.S. network? If so, what guidance might we provide? If we adopt a different standard, what standard should we adopt? As we stated in the *Order*, "[a] rule that only requires an originating provider to block the traffic specifically identified in the initial notice would arguably block no traffic at all, as the Enforcement Bureau cannot identify specific illegal traffic before it has been originated."[169] We therefore think that some standard is essential to avoid a rule that would allow illegal traffic to continue unimpeded.

[168] Appendix A, 47 CFR § 64.1200(n)(2).

[169] *Supra* para. 34.

85. Are there other approaches we should take instead of, or in addition to, this rule? For example, should we require all U.S.-based providers to retain call detail records for a set amount of time? How long do voice service providers currently retain these records, and what information do they include? Is there an industry best practice we could mandate? If so, is that retention period sufficient to allow the Enforcement Bureau time to investigate before sending a Notice of Suspected Illegal traffic, or is it possible that a Notice would be sent after the records are no longer retained? How much does it cost voice service providers to retain these records? Does the cost to retain records increase substantially the longer the records are required to be held? Should we require a shorter records retention period that would cover most cases, but still require the notified provider to block substantially similar traffic if it receives a notice when it can no longer identify the upstream provider? Is there anything else we should consider in adopting a rule to cover these situations?

86. *Repeated Notifications of Suspected Illegal Traffic to the Same Terminating or Non-Gateway Intermediate Provider.* We propose to require terminating and non-gateway intermediate providers to block when the Enforcement Bureau determines that it is necessary, so long as the terminating or non-gateway intermediate provider has previously received at least one Notice of Suspected Illegal Traffic. Specifically, if the Enforcement Bureau has previously sent a Notification of Suspected Illegal Traffic to the identified provider, it may require that provider to block substantially similar traffic if it determines, based on the totality of the circumstances, that the terminating or non-gateway intermediate provider is either intentionally or negligently allowing illegal traffic onto its network. In such a case, we propose to allow the Enforcement Bureau to direct, in a Notification of Suspected Illegal Traffic or Initial Determination Order, a terminating or non-gateway intermediate provider to both identify the upstream provider(s) from which it received the identified traffic and block the traffic.

87. We seek comment on this proposal. We are concerned that our current rules may not fully address situations in which the terminating or non-gateway intermediate provider may respond with information regarding the upstream provider from which it received identified traffic, but nonetheless is taking steps to shield other bad-actor providers or bad-actor callers.[170] Does this rule appropriately address this concern? Is requiring at least one Notice of Suspected Illegal Traffic an appropriate threshold before the Enforcement Bureau may take this step? Should we allow the Enforcement Bureau to take this step without having sent a prior Notice of Suspected Illegal Traffic, or should we instead adopt greater restrictions on when it can do so? We propose to require the Enforcement Bureau to consider both the number of prior Notices of Suspected Illegal Traffic and how recently the prior Notices were sent, but not to set specific thresholds beyond requiring at least one prior Notice. Is this the correct approach? Should we limit the length of time since the prior Notice? If so, how long should we allow? Should this time vary if the voice service provider has previously received multiple Notices of Suspected Illegal Traffic?

88. Beyond these threshold questions, we expect but do not propose to require the Enforcement Bureau to consider specific criteria in determining whether a provider is either intentionally or negligently allowing illegal traffic onto its network. Such criteria could include how frequently the notified provider appears in traceback requests, how cooperative the notified provider has been previously, what percentage of the notified provider's traffic appears to be illegal, evidence that the notified provider is involved in actively shielding illegal traffic, and any other evidence that indicates the notified provider is a bad actor. Is this the correct approach? Should we adopt specific criteria that the Enforcement Bureau must consider? If so, what should we include in those criteria? We seek comment on any other issues we should consider.

89. *Other Loopholes*. We seek comment on any other potential loopholes to our

[170] For example, a bad actor might intentionally set up a chain of voice service providers specifically to shield earlier providers in the chain from liability or to allow illegal traffic to continue even if one or more provider in the chain is removed.

requirements to block following Commission notification. We are concerned about either instances where illegal traffic would still reach consumers even after notification because no provider would be required to block it or any issues that bad-actor providers could exploit to protect themselves or other bad actors. Do the two proposals we discuss above sufficiently cover these concerns? If not, what is the concern and how might we address it? Are there any other issues we should consider?

B. SIP Codes for Immediate Notification of Blocked Calls

90. We seek comment on which SIP Code(s)[171] to require terminating providers with IP networks[172] to use to notify callers that calls have been blocked, consistent with the TRACED Act's directive to provide "transparency and effective redress."[173] Specifically, we seek comment on whether we should require use of the newly developed SIP Code 603+ for immediate notification, require use of SIP Code 608,[174] or require use of SIP Code 603.[175]

91. *Background*. In response to the TRACED Act, in December 2020, the Commission required that terminating providers blocking calls on an IP network use SIP Code 607, "Unwanted," or SIP Code 608, "Rejected," as appropriate, to notify callers or originating providers of a blocked call.[176] Following a petition seeking reconsideration from USTelecom, in 2021, the Commission permitted terminating providers with IP networks to use existing SIP Code 603, "Decline," to meet the immediate notification requirement.[177] However, the Commission made clear that it viewed this as an "interim measure as industry moves to full implementation of SIP Codes 607 and 608,"[178] and reaffirmed its belief that "we should retain the requirement that terminating providers ultimately use only SIP Codes 607 or 608 in IP networks."[179] At the same time, the Commission sought comment on the status of the implementation of SIP Codes 607 and 608, as well as whether and how to best transition away from SIP Code 603 for use as a response for call blocking.[180] We also sought comment on whether SIP Code 603 provides adequate information to callers and thus should not be phased out, or whether SIP Code 603 requires modification to make it useful to callers.[181] After the comment period for the rulemaking had ended, industry presented a new potential solution for the immediate notification problem, generally referred to as SIP Code 603+, "Network Blocked," which builds on the existing SIP Code 603 to provide

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[171] SIP Codes (used for calls carried over IP) and ISUP codes (used for calls carried over traditional TDM network technology) allow a terminating provider to send a response code when a call cannot be completed. These codes tell the caller or the originating provider why the call attempt failed. Internet Engineering Task Force, *Integrated Service Digital Network (ISDN) User Part (ISUP) to Session Initiation Protocol (SIP) Mapping* (Dec. 2002), https://tools.ietf.org/html/rfc3398 *(ISUP and SIP Code Mapping Specification*).

[172] Our rules already require terminating providers with non-IP networks to use ISDN User Part (ISUP) Code 21 with the cause location "user" for this purpose. 47 CFR § 64.1200(k)(9)(ii). For calls that transit both IP and non-IP networks, ISUP Code 21 must be mapped to SIP Code 603, 607, or 698 where the cause location is "user." 47 CFR §§ 64.1200(k)(9)(iii)-(iv). Our rules also require all voice service providers in the call path to transmit the appropriate SIP or ISUP code. 47 CFR § 64.1200(k)(9).

[173] TRACED Act § 10(b) (codified at 47 U.S.C. § 227(j)).

[174] *December 2020 Call Blocking Order*, 35 FCC Rcd at 15240-42, paras. 56-60.

[175] *Transparency and Redress Reconsideration Order*, 36 FCC Rcd at 17966-67, paras. 13-22.

[176] *December 2020 Call Blocking Order*, 35 FCC Rcd at 15240-42, paras. 56-60.

[177] *See Transparency and Redress Reconsideration Order*, 36 FCC Rcd at 17966-67, paras. 9-22; 47 CFR § 64.1200(k)(9)(i) (requiring providers that terminate calls on an IP network to use SIP Code "603, 607, or 608").

[178] *Id*. at 17969-70, para. 17.

[179] *Transparency and Redress Reconsideration Order*, 36 FCC Rcd at 17979, para. 43.

[180] *Id.* at 17979-81, paras. 43-47.

[181] *See id*. at 17979-80, para. 44.

greater information to callers.[182]

92. *Competing Standards*. We believe that either SIP Code 608 or SIP Code 603+ has the best potential to provide callers with meaningful information when calls are blocked based on reasonable analytics, allowing for transparency and effective redress. We seek comment on this belief. We note that, because we have not previously sought comment on SIP Code 603+, we are particularly interested in the benefits and disadvantages of that particular code relative to SIP Code 608.[183] Are both standards capable of satisfying the TRACED Act's requirement that we provide transparency and effective redress to callers? What are the advantages or disadvantages of each standard? Are either or both of these SIP Codes more advantageous than requiring use of SIP Code 603, and if so, why? Given that SIP Code 607 is not intended for use when block is based on reasonable analytics, we no longer believe that it would be appropriate to continue to allow use of SIP Code 607 for this purpose, particularly given that there are now two options that specifically address this type of blocking available in SIP Codes 603+ and 608.[184] Is this belief correct?

93. *Implementation Details and Issues*. We seek comment on the implementation process and costs for each code. Voice service providers have argued that SIP Code 603+ is easier to implement.[185] Is this correct? How long will it take voice service providers to implement SIP Codes 603+, 607, or 608, respectively? Would the implementation timeline for SIP Code 608 vary if we require the jCard[186] or if we do not, and if so, how? Should the Commission require a faster implementation for the code it adopts, considering the Commission's directive in the *December 2020 Call Blocking Order*?[187] What should the implementation deadline be? How can the Commission ensure it is met? What are the respective costs of implementation? Other than amending our mapping rule to reflect whatever SIP Code (or possibly SIP Codes) that we require to be used,[188] do we need to take any additional steps to ensure the SIP Code(s) appropriately map to or from ISUP code 21 when calls transit non-IP networks, or is our current rule sufficient?

94. *Value to Callers*. Which SIP Code is most helpful for callers to receive and use for immediate notification of blocking based on an analytics program, or are the codes comparable for callers? What is the cost to callers to adapt their systems to receive SIP Code 603+, 607, or 608? Is there

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[182] Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (filed Sept. 14, 2022) (*603+ Ex Parte*); *see generally* ATIS, ATIS-1000099, Robocall Call Blocking Notification, https://access.atis.org/apps/group_public/download.php/67424/ATIS-1000099.pdf.

[183] Prior to the release of the SIP Code 603+ standard, some callers raised concerns about whether SIP Code 603 would actually provide actionable information to callers in real time. *See, e.g.*, ABA et al. Jan. 31, 2022 Comments at 6-7. USTelecom's more recent filing appears to resolve these issues. *603+ Ex Parte* at 1. We have not, however, received many filings from callers since the adoption of the 603+ standard.

[184] 47 CFR § 64.1200(k)(9)(i); *see also Transparency and Redress Reconsideration Order*, 36 FCC Rcd at 17973-75, paras. 23-30.

[185] *See 603+ Ex Parte*. Some callers have indicated that this new code may meet their needs, but urged us not to remove SIP Code 608 from the rules until it has been tested and implemented. Letter from Jonathan Thessin, Vice President/Senior Counsel, American Bankers Association to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (filed Oct. 7, 2022) at 3.

[186] The "jCard" is a JSON format for representing and exchanging information about individuals and other entities. Internet Engineering Task Force, *jCard: The JSON Format for vCard* (Jan. 2014), https://www.rfc-editor.org/rfc/rfc7095.html. The SIP Code 608 specification includes use of the jCard with a cryptographic signature to provide the redress information. Internet Engineering Task Force, *A Session Initiation Protocol (SIP) Response Code for Rejected Calls* (Dec. 2019), https://www.rfc-editor.org/rfc/rfc8688.html.

[187] TRACED Act § 10(b) (codified at 47 U.S.C. § 227(j)); *December 2020 Call Blocking Order*, 35 FCC Rcd at 15239-42, paras. 52-61.

[188] *See* 47 CFR §§ 64.1200(k)(9)(iii), (iv).

any information that would be available under SIP Code 608, either with or without the jCard, that is not available under SIP Code 603+? If so, does the benefit of this information outweigh any additional costs that voice service providers might incur to implement SIP Code 608 throughout the network? Should we require voice service providers to use one of these SIP Codes or continue to allow voice service providers to choose from several SIP Codes. and if so, which Codes are most appropriate? Should we continue to allow use of SIP Code 603? What impact would each approach have on callers? What is the timeline for callers to be able to receive SIP Code 603+, 607, and 608? Is there anything else we should consider?

C. Increasing Trust in Caller ID By Providing Accurate Caller Name to Call Recipients

95. *Caller Name for Voice Calls.* We seek comment on whether and how to provide accurate caller name information to call recipients when the terminating voice service provider displays an indication that the call received A-level attestation.[189] Some terminating providers have chosen to display an indication of caller ID authentication status to the call recipient, such as through a green checkmark. While this may tell an informed consumer that the caller ID is either not spoofed or spoofed with authorization,[190] it does not tell them anything about the identity of the caller. Mobile phones do not routinely display information from caller ID name (CNAM) databases,[191] and an unfamiliar number without a display name is still an unfamiliar number, even if the recipient knows that it was not spoofed.

96. We believe that combining the display of caller name information with the information that the number itself was not spoofed could provide real benefit to consumers, who would then have more data to use when deciding whether or not to answer the phone. We seek comment on this belief. Does the caller ID attestation information display alone significantly benefit the consumer? If so, how does that benefit compare to the benefit of caller name data alone? Is the combined information more beneficial than either single piece of information? What would we need to do to ensure that these benefits are realized?

97. Caller name information is only valuable if it is accurate. We therefore seek comment on the source of caller name information for display. For example, should we rely on existing CNAM databases for this purpose? Is it true that the accuracy of these databases varies and is impacted by whether the caller provides accurate information? How can we ensure that this information is more accurate? We believe that a caller that provides inaccurate information to populate CNAM databases with the intent to defraud, cause harm, or otherwise obtain something of value is in violation of the Truth in Caller ID Act.[192] We seek comment on this belief. Are there other steps we could take to ensure

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[189] The STIR/SHAKEN caller ID authentication framework allows for three levels of attestation. A-level attestation, sometimes called "full" attestation, requires that the signing voice service provider: 1) is responsible for the origination of the call onto the network; 2) "[h]as a direct authenticated relationship with the customer and can identify the customer"; and 3) "[h]as established a verified association with the telephone number used for the call." By contrast, B-level attestation, sometimes called "partial" attestation, only requires that the first two requirements be met. Finally, C-level attestation, sometimes called "gateway" attestation, is the most limited form of attestation, requiring only that the signing voice service provider both be "the entry point of the call into its VoIP network" and have "no relationship with the initiator of the call (e.g., international gateways)." ATIS & SIP Forum, Joint ATIS/SIP Forum Standard—Signature-Based Handling of Asserted Information Using toKENs (SHAKEN) at 12-13 (Aug. 16, 2022), https://access.atis.org/apps/group_public/download.php/67436/ATIS-1000074.v003.pdf.

[190] While caller ID spoofing can be used to cause harm, it also has valid uses. For example, a doctor may choose to spoof their office line when placing calls from a personal cell phone, or a crisis center or domestic abuse shelter may wish to hide their number to protect clients.

[191] Terminating providers that provide caller name information to customers will generally check the database and display whatever information is available to the customer. This information is provided by the caller, through their originating provider, but it may or may not be actively managed by the originating provider. Some databases are more routinely updated than others. Terminating providers may pay a fee each time they access this information.

[192] *See* 47 U.S.C. § 227(e)(1).

CNAM accuracy?

98. Alternatively, are there other sources that would be more accurate for caller name display? We know that industry has been working on branded calling options, such as Rich Call Data, which makes use of the STIR/SHAKEN framework to provide caller name and other branding for display to the consumer.[193] Unlike the traditional CNAM databases, Rich Call Data is not widely deployed and may not work on some networks;[194] furthermore, the primary use case appears to be for enterprise calling, rather than caller name generally. However, its incorporation into the STIR/SHAKEN caller ID authentication framework should increase the reliability of the information. Is this a correct assumption? Would Rich Call Data, or some other option, be a better choice for caller name display data? If so, what limitations and strengths do those options have, and how might we craft a rule to ensure that the limitations are addressed? How long is it likely to take for these tools to be broadly available in the network? Given that these technologies are generally focused on enterprise callers, how should we handle A-level attested calls for which there is no caller name information? Should intermediate providers, terminating providers, and/or their analytics partners be required to pass without alteration Rich Call Data or other authenticated caller identification such as caller name, logo, or reason for the call?[195]

99. Instead of requiring use of a specific technology for the caller name display, should we adopt a technology-neutral standard? For example, could we simply require any terminating provider to display caller name information if it displays an indication that the call received A-level attestation? Such a rule would mean that, if the database or technology the terminating provider chooses to use for this information does not include caller name data for a particular caller, the terminating provider would not be permitted to display an indication that the caller ID received A-level attestation. Are there any issues with this approach? Should we set any specific requirements to ensure the accuracy of the data? Are there alternative ways to handle this that would benefit consumers?

100. Our understanding is that terminating providers that choose to display caller ID authentication information only do so when the call receives A-level attestation. Are there terminating providers that display an indication when there is a different level of attestation? If so, should we also require these terminating providers to display caller name information, even though there is a risk that the caller ID was spoofed? Are there any other issues we should consider, such as the appropriate implementation timeline?

D. Enforcement Against Voice Service Providers that Allow Customers to Originate Illegal Calls

101. We propose to authorize a base forfeiture of $11,000 for any voice service provider that fails to take affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence in ensuring that its services are not used to originate illegal traffic.[196] We further propose to authorize this forfeiture to be increased up to the maximum forfeiture that our rules allow us to impose on non-common

[193] *See, e.g.*, TransNexus, *Rich Call Data and STIR/SHAKEN*, https://transnexus.com/whitepapers/rich-call-data/ (last visited Mar. 21, 2023); First Orion, *Rich Call Data (RCD) – What Is It and Why Is It Important?*, https://firstorion.com/rich-call-data-what-is-it/ (last visited Mar. 21, 2023).

[194] Because Rich Call Data relies on the STIR/SHAKEN caller ID authentication framework, it will not work on non-IP networks, including where a call originates and terminates in IP, but transits a non-IP network or interconnection.

[195] Letter from Michael H. Pryor, Attorney at Law, Brownstein Hyatt Farber Schreck, LLP, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (filed May 10, 2023) (Cloud Communications Alliance *Ex Parte*).

[196] 47 CFR § 64.1200(n)(3).

carriers.[197] Additionally, we seek comment on whether we should adopt a similar forfeiture for failure to comply with our requirement to know the upstream provider.[198]

102. We seek comment on these proposals. We believe that establishing a base forfeiture well below the maximum is appropriate, as it will allow us to adjust the total forfeiture upward or downward on a case-by-case basis consistent with section 503 of the Act and section 1.80 of the Commission's rules.[199] We seek comment on this belief. Is the base forfeiture we propose sufficient incentive to encourage voice service providers that are not actively trying to prevent callers from placing illegal calls to take steps to ensure that the measures they take are truly effective? Would some other threshold be appropriate? If so, what would be an appropriate base forfeiture? Similarly, is our proposal to set the maximum forfeiture amount at the maximum our rules permit for non-common carriers appropriate? We do not believe that there is any reason to penalize common carriers more harshly than non-common carriers. We seek comment on this belief. For this purpose, how should we define an individual violation of this rule? For example, should we consider each customer for which the voice service provider fails to take effective measures a single violation? If so, if a voice service provider allows that customer to originate illegal calls over the course of several days, should we consider this a continuing violation such that we may impose a forfeiture of up to $23,727 per day?[200] In general, we do not believe that this will interact with the forfeiture we adopted earlier this year for failure to block.[201] However, we seek comment on any potential interactions and whether, and how, we should address them. Is there anything else we should consider in authorizing these forfeitures?

103. We also seek comment on whether it would be appropriate to impose specific forfeitures for violations of our rules requiring a voice service provider to know its upstream provider.[202] Should we take the same approach for violations of these rules, or would a different approach be appropriate? For example, since the know-your-upstream-provider requirements apply to a high volume of illegal traffic, rather than the origination of any illegal traffic, should the base forfeiture be higher or lower?

104. We believe that establishing a new base forfeiture is appropriate in part because bad-actor voice service providers profit from the callers that they protect. We seek comment on this belief. For example, do bad-actor voice service providers profit from fees paid by downstream providers, such as CNAM database dip fees? Is there some other approach we could take that would better address these economic incentives? Is there anything else we should consider?

E. Legal Authority

105. We propose to find our legal authority for the proposed rules consistent with our authority under sections 201(b), 202(a), and 251(e) of the Communications Act of 1934, as amended (the Act) as well as from the Truth in Caller ID Act and our ancillary authority.[203] In order for the rules addressing voice calls to provide benefit, they must include all voice service providers, including non-Title II providers. We further propose to rely on our authority under the TRACED Act for establishing a

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[197] *See* 47 CFR § 1.80(b)(9); *see also* 47 U.S.C. § 503(b)(2)(D).

[198] 47 CFR § 64.1200(n)(4); *supra* Section III.C. When the rules adopted in the accompanying Report and Order are published in the CFR, 47 CFR § 64.1200(n)(4) will become 47 CFR § 64.1200(n)(5).

[199] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), tbl. 3.

[200] *See* 47 CFR § 1.80(b)(9) ("[T]he 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 . . . .").

[201] *2023 Caller ID Authentication Order* at 29-30, paras. 54-55.

[202] 47 CFR § 64.1200(4); *supra* Section III.C.

[203] 47 U.S.C. §§ 154(i), 201(b), 202(a), 251(e).

specific SIP Code to be used for immediate notification of call blocking.[204] The Act and the Truth in Caller ID Act have long formed the basis for the Commission's prohibitions on call blocking.[205] We believe that these source of authority grant us sufficient authority to adopt the proposed rules, and we seek comment on this belief. We propose that we have authority for some matters we seek comment on here 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."[206] Are there any other sources of authority we should rely on? Do any of these sources of authority not apply to the rules we propose today?

V. NOTICE OF INQUIRY

106. Voice service providers have a wide array of tools they can use to fight the ever-changing landscape of illegal calls. While some of these tools are mandated or otherwise regulated directly by the Commission, some may not be directly subject to our rules. Even where we do not directly regulate, it is important for us to be aware of the options voice service providers have and whether tools are working as intended to benefit and protect consumers. With this Notice of Inquiry, we seek information regarding the current state of technology for identifying and combating illegal calls, as well as the current state of call labeling.

A. Technology for Fighting Illegal Calls

107. We seek comment on the tools voice service providers currently use to identify and combat illegal calls. We also seek comment on tools that are in development that show particular promise. What tools do voice service providers use, and how do these tools help identify and combat illegal calls? Are there any tools that are particularly valuable? If so, is there anything we can do to improve or promote these tools? Are voice service providers reluctant to use certain tools due to fear of liability?

108. We are particularly interested in the use of honeypots and whether there is any way for us to leverage or facilitate the use of honeypots more broadly. A honeypot is an unassigned phone number that is used by a voice service provider, researcher, or other third party to receive (and, where permissible, record) calls to those numbers.[207] It allows the voice service provider (or other holder) to "listen in" on such calls. One potential advantage of a honeypot is that it allows "listening in" without violating any actual customer's privacy. We seek comment on this anticipated benefit, and whether the use of honeypots involves any privacy risk (*e.g.*, the receipt of inadvertent calls or voicemails in which the caller reveals personally identifiable information (PII)). We additionally seek comment on whether we should take steps to further the use of honeypots. Are there any barriers to their use we could remove? Can honeypots be utilized lawfully in every state, or are there state laws that might restrict or limit their use? Alternatively, should we consider implementing a Commission-operated honeypot? If so, what benefits would that bring that cannot be realized through private-sector use? Are there any privacy or other concerns we should be aware of? Alternatively, are there other options that fill the same role as honeypots more efficiently, or without those concerns?

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[204] TRACED Act § 10(b) (codified at 47 U.S.C. § 227(j)).

[205] *See, e.g.*, *2017 Call Blocking Order*, 32 FCC Rcd at 9726-27, paras. 60-62; *July 2020 Call Blocking Order*, 35 FCC Rcd at 7637-38, paras. 61-68; *December 2020 Call Blocking Order*, 35 FCC Rcd at 15233-34, paras. 37-38.

[206] 47 U.S.C. § 251(e).

[207] For example, researchers from North Carolina State University conducted a study using a honeypot of 66,606 lines over 11 months to examine unsolicited calls. Sathvik Prasad, Elijah Bouma-Sims, Athishay Kiran Mylappan, Bradley Reaves, Who's Calling? Characterizing Robocalls through Audio and Metadata Analysis (2020), https://www.usenix.org/system/files/sec20-prasad.pdf. The Canadian Radio-television and Telecommunications Commission has also made use of honeypots. Canadian Radio-television and Telecommunications Commission, The National Do Not Call List's (DNCL) 10-Year Anniversary (2018), https://crtc.gc.ca/eng/dncl/10ann.htm.

109. We recognize that, in some cases, voice service providers may be reluctant to publicly disclose information regarding the tools they use to combat illegal calls. Where possible, we encourage voice service providers to file public comments. If a voice service provider has particular competitive concerns, however, or is concerned that their filing may allow bad actors to circumvent these tools, we also welcome confidential filings.

B. Call Labeling

110. Call labeling, which comes in several forms, is a popular tool because it gives call recipients information they can use to decide whether to answer a call. Some labels seek to warn the call recipient of the level of risk the call presents; these are generally based on analytics and may include phrases like "scam likely" or "fraud risk." Other labels seek to provide information as to the content of the call, such as "telemarketing" or "survey."

111. We seek comment on the current state of call labeling. Are there any voice service providers that do not offer call labeling services to their customers? If so, why not? What labels are most commonly used, and how are these labels determined? ? How is STIR/SHAKEN caller ID authentication information used in determining the correct label?[208] Similarly, what role does crowd feedback play in call labeling? Do consumers report satisfaction with these services? How often do voice service providers receive complaints about inaccurate labels from call recipients? From callers? How often do consumers opt out of these services? How have voice service providers responded to these issues? How do analytics providers weigh the claims of the call originator against crowd feedback indicating a call is unwanted or abusive? Is there data regarding how often call recipients answer calls with negative labels compared to how often they answer calls that display just a number? Do labels ever override a caller name that the call recipient has saved to their phone, or does the saved name take precedence?

112. Is there anything the Commission can do to improve the availability and accuracy of call labeling, or make it more valuable to consumers and accurate for callers? Should the Commission do so? What is our legal authority to do so?

C. Digital Equity and Inclusion

113. The Commission, as part of its continuing effort to advance digital equity for all,[209] including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations[210] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

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[208] *See generally* Letter from Steven A. Augustino, Attorney, Nelson Mullins Riley & Scarborough LLP, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (filed May 11, 2023) (TNS *Ex Parte*) (suggesting several additional questions included in this paragraph).

[209] 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.

[210] 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).

VI. PROCEDURAL MATTERS

114. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[211] 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."[212] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

115. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Further Notice*. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

116. *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 sections 64.1200(n)(1) and 64.6305(d)(2)(iii) and (f)(2)(iii) require 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 any new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

117. In this document, we have assessed the effects of requiring all voice service providers to respond to traceback within 24 hours and modifying the certification requirement for the Robocall Mitigation Database accordingly, and find that small voice service providers have had ample time to develop processes to allow them to respond within the appropriate time and that providers for which this presents a significant burden, either due to their size or for some other reason, may request a waiver.

118. The *Further Notice* also contains a proposed revised information collection requirement. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirement 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.

119. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

120. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Further Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[213] Persons making *ex parte* presentations must file a copy of any written presentation or a

[211] 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[212] 5 U.S.C. § 605(b).

[213] 47 CFR §§ 1.1200 *et seq.*

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.[214]

121. *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, 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.

122. *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).

123. *Availability of Documents.* Comments, reply comments, *ex parte* submissions, and the Report and Order and Further Notice will be available via ECFS. Documents will be available

[214] 47 CFR § 1.49(f).

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.

124. *Additional Information*. For further information about the *Further Notice* and *Notice of Inquiry*, contact Jerusha Burnett, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at jerusha.burnett@fcc.gov, (202) 418-0526.

VII. ORDERING CLAUSES

125. **IT IS ORDERED** that, pursuant to sections 4(i), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 202, 217, 227, 251(e), 303(r), 403, this *Report and Order* **IS ADOPTED.**

126. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 201, 202, 227, 227b 251(e), 303(r), 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 202, 227, 251(e), 303(r), 403 and 503, and section 7 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, this *Further Notice of Proposed Rulemaking and Notice of Inquiry* **IS ADOPTED.**

127. **IT IS FURTHER ORDERED** that this Report and Order **SHALL BE EFFECTIVE** 180 days after publication in the Federal Register, except that the amendments to section 64.1200(n)(1), section 64.6305(d)(2)(iii), and section 64.6305(f)(2)(iii), 47 CFR §§ 64.1200(n)(1), 64.6305(d)(2)(iii), 64.6305(f)(2)(iii), which may contain new or modified information collection requirements, will not become effective until the later of: i) 180 days after publication in the Federal Register; or ii) 30 days after the Office of Management and Budget completes review of any information collection requirements that the Consumer & Governmental Affairs Bureau determines is required under the Paperwork Reduction Act. In addition, the amendments to section 64.6305(d)(2)(ii) and section 64.6305(e)(2)(ii), 47 CFR §§ 64.6305(d)(2)(ii), 64.6305(e)(2)(ii) will not become effective until the later of: i) 180 days after publication in the Federal Register; or ii) 30 days after the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act for the changes made to these paragraphs in the 2023 Caller ID Authentication Order. The Commission directs the Consumer & Governmental Affairs Bureau and the Wireline Competition Bureau, as appropriate, to announce the effective dates for section 64.1200(n)(1), section 64.6305(d)(2)(ii), section 64.6305(d)(2)(iii), section 64.6305(e)(2)(ii), and section 64.6305(f)(2)(iii) by subsequent Public Notice.

128. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the *Further Notice of Proposed Rulemaking and Notice of Inquiry* 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.

129. **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, Notice of Proposed Rulemaking, and Notice of Inquiry* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

130. **IT IS FURTHER ORDERED** that the Commission's Office of the Managing Director, Reference Information Center, **SHALL SEND** a copy of this *Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, including the 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 and 64 of Title 47 of the Code of Federal Regulations as follows:

PART 0—COMMISSION ORGANIZATION

Subpart A—Organization

1. Amend section 0.111(a) by revising paragraph (27) to read:

(27) Identify suspected illegal calls and provide written notice to voice service providers. The Enforcement Bureau shall: (1) identify with as much particularity as possible the suspected traffic; (2) cite the statutory or regulatory provisions the suspected traffic appears to violate; (3) provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful, including any relevant nonconfidential evidence from credible sources such as the industry traceback consortium or law enforcement agencies; and (4) direct the voice service provider receiving the notice that it must comply with section 64.1200(n)(2) of the Commission's rules.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Amend section 64.1200 by redesignating paragraph (n)(3) as (n)(4); revising paragraphs (k)(5), (k)(6), and (n)(1); revising and redesignating paragraphs (n)(4) to (n)(5), (n)(5) to (n)(2), and (n)(6) to (n)(3); adding new paragraph (n)(5); and removing paragraph (n)(6) to read:

(k)(5) A provider may not block a voice call under paragraphs (k)(1) through (4), (11), (n)(2)-(3), (5), or (o) of this section if the call is an emergency call placed to 911.

(k)(6) When blocking consistent with paragraphs (k)(1) through (4), (11), (n)(2)-(3), (5), or (o) of this section, a provider must make all reasonable efforts to ensure that calls from public safety answering points and government emergency numbers are not blocked.

(n)(1) Upon receipt of a traceback request from the Commission, civil law enforcement, criminal law enforcement, or the industry traceback consortium, the provider must fully respond to the traceback request within 24 hours of receipt of the request. The 24-hour clock does not start outside of business hours, and requests received during that time are deemed received at 8:00 a.m. on the next business day. If the 24-hour response period would end on a non-business day, either a weekend or a federal legal holiday, the 24-hour clock does not run for the weekend or holiday in question, and restarts at 12:01 a.m. on the next business day following when the request would otherwise be due. For example, a request received at 3:00 p.m. on a Friday will be due at 3:00 p.m. on the following Monday, assuming that Monday is not a federal legal holiday. For purposes of paragraph (n)(1), "business day" is defined as Monday through Friday, excluding federal legal holidays, and "business hours" is defined as 8:00 a.m. to 5:30 p.m. on a business day. For purposes of paragraph (n)(1), all times are local time for the office that is required to respond to the request.

(n)(2) Upon receipt of a Notice of Suspected Illegal Traffic from the Commission through its Enforcement Bureau, take the applicable actions with respect to the identified traffic described in paragraphs (i)-(iii) below. The provider will not be held liable under the Communications Act or the Commission's rules in this chapter for providers that inadvertently block lawful traffic as part of the requirement to block substantially similar traffic so long as it is blocking consistent with the requirements of paragraph (n)(2)(i)-(iii). For purposes of paragraph (n)(2), "identified traffic" means the illegal traffic

identified in the Notification of Suspected Illegal Traffic issued by the Enforcement Bureau. The following procedures shall apply:

(i)(A) The Enforcement Bureau will issue a Notification of Suspected Illegal Traffic that identifies with as much particularity as possible the suspected illegal traffic; provides the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful; cites the statutory or regulatory provisions the identified traffic appears to violate; and directs the provider receiving the notice that it must comply with this section. The Enforcement Bureau's Notification of Suspected Illegal Traffic shall give the identified provider a minimum of 14 days to comply with the notice. Each notified provider must promptly investigate the identified traffic and report the results of that investigation to the Enforcement Bureau within the timeframe specified in the Notification of Suspected Illegal Traffic. If the provider's investigation determines that it served as the gateway or originating provider for the identified traffic, it must block or cease accepting the identified traffic and substantially similar traffic on an ongoing basis within the timeframe specified in the Notification of Suspected Illegal Traffic. The provider must include in its report to the Enforcement Bureau:

(1) a certification that it is blocking the identified traffic and will continue to do so; and

(2) a description of its plan to identify and block or cease accepting substantially similar traffic on an ongoing basis.

(B) If the provider's investigation determines that the identified traffic is not illegal, it shall 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. Absent such a showing, or if the Enforcement Bureau determines based on the evidence that the traffic is illegal despite the provider's assertions, the identified traffic will be deemed illegal. If the notified provider determines during this investigation that it did not serve as the gateway provider or originating provider for any of the identified traffic, it shall provide an explanation as to how it reached that conclusion and, if it is a non-gateway intermediate or terminating provider for the identified traffic, it must identify the upstream provider(s) from which it received the identified traffic and, if possible, take lawful steps to mitigate this traffic. If the Enforcement Bureau finds that an approved plan is not blocking substantially similar traffic, the identified provider shall modify its plan to block such traffic. If the Enforcement Bureau finds that the identified provider continues to allow suspected illegal traffic onto the U.S. network, it may proceed under paragraph (n)(2)(ii) or (iii) of this section, as appropriate.

(ii) If the provider fails to respond to the Notification of Suspected Illegal Traffic, the Enforcement Bureau determines that the response is insufficient, the Enforcement Bureau determines that the provider is continuing to originate substantially similar traffic or allow substantially similar traffic onto the U.S. network after the timeframe specified in the Notification of Suspected Illegal Traffic, or the Enforcement Bureau determines based on the evidence that the traffic is illegal despite the provider's assertions, the Enforcement Bureau shall issue an Initial Determination Order to the provider stating the Bureau's initial determination that the provider is not in compliance with this section. The Initial Determination Order shall include the Enforcement Bureau's reasoning for its determination and give the provider a minimum of 14 days to provide a final response prior to the Enforcement Bureau making a final determination on whether the provider is in compliance with this section.

(iii) If the provider does not provide an adequate response to the Initial Determination Order within the timeframe permitted in that Order or continues to originate substantially similar traffic onto the U.S. network, the Enforcement Bureau shall issue a Final Determination Order finding that the provider is not in compliance with this section. The Final Determination Orders shall be published in EB Docket No. 22-174 at https://www.fcc.gov/ecfs/search/search-filings. A Final Determination Order may be issued up to one year after the release date of the Initial Determination Order, and may be based on either an immediate failure to comply with this rule or a determination that the provider has failed to meet its ongoing obligation under this rule to block substantially similar traffic.

(n)(3) When notified by the Commission through its Enforcement Bureau that a Final Determination Order has been issued finding that an upstream provider has failed to comply with paragraph (n)(2) of this section, block and cease accepting all traffic received directly from the upstream provider beginning 30 days after the release date of the Final Determination Order. Paragraph (n)(3) applies to any provider immediately downstream from the upstream provider. The Enforcement Bureau shall provide notification by publishing the Final Determination Order in EB Docket No. 22-174 at https://www.fcc.gov/ecfs/search/search-filings. Providers must monitor EB Docket No. 22-174 and initiate blocking no later than 30 days from the release date of the Final Determination Order. A provider that chooses to initiate blocking sooner than 30 days from the release date may do so consistent with paragraph (k)(4) of this section.

(n)(5) Take reasonable and effective steps to ensure that any originating provider or intermediate provider, foreign or domestic, from which it directly receives traffic is not using the provider to carry or process a high volume of illegal traffic onto the U.S. network.

Subpart HH—Caller ID Authentication.

3. Amend Section 64.6305 by amending paragraphs (a)(2), (c)(2), (d)(2)(ii), (d)(2)(iii), (e)(2)(ii), and (f)(2)(iii).

(a) * * *

(a)(2) Any robocall mitigation program implemented pursuant to paragraph (a)(1) of this section shall include reasonable steps to avoid originating illegal robocall traffic and shall include a commitment to respond 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 originate calls.

* * * * *

(c)(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 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.

* * * * *

(d)(2)(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)(4), 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).

(d)(2)(iii) A statement of the voice service provider's commitment to respond 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 originate calls; and

* * * * *

(e)(2)(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)(5), 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);

* * * * *

(f)(2)(iii) A statement of the non-gateway intermediate provider's commitment to respond 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

* * * * *

APPENDIX B
Proposed Rules

The Federal Communications Commission amends parts 1 and 64 of Title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart A—General Rules of Practice and Procedure

1. Amend section 1.80 by adding a row to Table 1 to paragraph (b)(10) to read:

Failure to prevent customers from originating illegal calls	11,000

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Amend section 64.1200 by adding paragraph (s) and revising paragraphs (n)(2) and (o) to read:

(n)(2) * * * * *

(B) If the provider's investigation determines that the identified traffic is not illegal, it shall 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. Absent such a showing, or if the Enforcement Bureau determines based on the evidence that the traffic is illegal despite the provider's assertions, the identified traffic will be deemed illegal. If the notified provider determines during this investigation that it did not serve as the gateway provider or originating provider for any of the identified traffic, it shall provide an explanation as to how it reached that conclusion, identify the upstream provider(s) from which it received the identified traffic, and, if possible, take lawful steps to mitigate this traffic. If the provider responds to the Enforcement Bureau that it cannot identify any or all of the upstream provider(s) from which it received the traffic, it must block substantially similar traffic consistent with the obligations of gateway and originating providers in section (n)(2)(i)(A). If the Enforcement Bureau finds that an approved plan is not blocking substantially similar traffic, the identified provider shall modify its plan to block such traffic. If the Enforcement Bureau finds that the identified provider continues to allow suspected illegal traffic onto the U.S. network, it may proceed under paragraph (n)(2)(ii) or (iii) of this section, as appropriate.

* * * * *

(C) If the Enforcement Bureau has previously sent a Notification of Suspected Illegal Traffic to the identified provider, it may require that provider to block substantially similar traffic consistent with the obligations of gateway and originating providers in section (n)(2)(i)(A) of this rule and to identify the upstream provider(s) from which it received the identified traffic— if it determines, based on the totality of the circumstances, that the terminating or non-gateway intermediate provider is either intentionally or negligently allowing illegal traffic onto its network.

(o) A voice service provider must 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:

(1) Numbers for which the subscriber to the number has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only;

(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 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.

(s) A terminating provider must offer analytics-based blocking of calls that are highly likely to be illegal on an opt-out basis without charge to consumers. A provider that offers blocking services consistent with paragraphs (k)(3) or (k)(11) of this sections will be deemed to be in compliance with this paragraph (p), so long as those services are offered without charge.

APPENDIX C
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 (*May 2022 Further Notice*).[2] The Commission sought written public comment on the proposals in the *May 2022 Further Notice*, including comment on the IRFA. The comments received are discussed below in Section B. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Order

2. The *Report and Order* takes important steps in the fight against illegal robocalls by extending certain requirements to a broader range of voice service providers.[4] First, the *Report and Order* requires all domestic voice service providers to respond to traceback requests within 24 hours of the request, extending the previous rule applicable to gateway providers to all providers.[5] Second, it requires originating providers to block illegal traffic when notified of such traffic by the Commission and, if they fail to do, requires all voice service providers in the U.S. to block all traffic from the bad-actor voice service provider, consistent with the existing rule for gateway providers.[6] This modification eliminates potential ambiguity as to how providers should effectively mitigate illegal traffic and provides certainty to voice service providers that may otherwise be unsure how to comply. Finally, it requires all voice service providers accepting traffic from an upstream provider to take reasonable and effective steps to ensure that the immediate upstream provider is not using them to carry or process a high volume of illegal traffic.[7] The expansion of these rules protects consumers from illegal calls, holds voice service providers responsible for the calls they carry, and aids in the identification of bad actors.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. While no comments specifically addressed the *May 2022 Further Notice* IRFA,[8] the Commission did receive some comments that addressed the impact of the proposed rules on small providers. Some commenters raised concerns about the 24-hour traceback requirement.[9] In particular,

[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *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, FCC 22-37, at 63-90, paras. 157-232 (May 20, 2022) (*May 2022 Further Notice*).

[3] *See* 5 U.S.C. § 604.

[4] *Report and Order* at paras. 21-50.

[5] *Id.* at paras. 21-27.

[6] *Id.* at paras. 28-47.

[7] *Id.* at paras. 48-50.

[8] *May 2022 Further Notice* at 122-135, Appx. D.

[9] *See* ACA Connects Comments at 8-9 (noting that the Commission recognized that smaller providers may struggle to respond quickly, and stating that the "only reason to codify that standard as a hard-and-fast requirement would be to enforce against smaller providers"); VON Comments at 2 (arguing that a rigid requirement imposes "significant burdens on smaller providers that may struggle to comply, particular with requests that arrive at the end of, or after the close of the typical business day" and urging the Commission to make clear that weekends and holidays would not count against the 24 hour clock); ACA Connects Reply Comments at 4 (arguing that filings by the Industry Traceback group validate the concerns raised in their prior comments).

commenters noted that the Commission recognized that smaller providers may struggle to respond quickly and result in "significant burdens" to small entities.[10] Still other comments urged us to adopt a tiered approach to provide flexibility for smaller providers that receive infrequent traceback requests.[11] We acknowledge these concerns in the *Report and Order*,[12] and discuss steps taken to address these concerns in Section F of this FRFA. The rule we adopt in the *Report and Order* codifies the expectation of the existing rule and provides flexibility to address requests received on evenings, weekends, and holidays.[13] The Commission further 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 and economic burden for small entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[14] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[15] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[16] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[17] 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.[18]

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.[19] First, while

[10] ACA Connects Comments at 8-9; VON Comments at 2.

[11] *See* CCA Comments at 6 (urging the Commission to adopt an approach that "would provide flexibility for providers that receive infrequent traceback requests" who are likely to be smaller providers); VON Comments at 2 (asking for the Commission to, if it adopts a tiered approach, be sure to provide clear guidance).

[12] *Report and Order* at para. 24.

[13] *Id.* at paras. 21-27.

[14] 5 U.S.C. § 604(a)(3).

[15] *See* 5 U.S.C. § 604 (a)(4).

[16] *See* 5 U.S.C. § 601(6).

[17] *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."

[18] *See* 15 U.S.C. § 632.

[19] *See* 5 U.S.C. § 601(3)-(6).

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.[20] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[21]

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."[22] 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.[23] 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.[24]

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."[25] U.S. Census Bureau data from the 2017 Census of Governments[26] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[27] Of this number there were 36,931 general purpose governments (county[28], municipal and town or township[29]) with populations of

[20] *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).

[21] *Id*.

[22] *See* 5 U.S.C. § 601(4).

[23] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[24] *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) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[25] *See* 5 U.S.C. § 601(5).

[26] *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.

[27] *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.

[28] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments

(continued….)

less than 50,000 and 12,040 special purpose governments - independent school districts[30] with enrollment populations of less than 50,000.[31] 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."[32]

1. Wireline Carriers

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.[33] 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.[34] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[35] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[36]

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[37] U.S. Census Bureau data for 2017 show that there

(Continued from previous page)
with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[29] *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.

[30] *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.

[31] 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.

[32] 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.

[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] *Id.*

[35] *Id.*

[36] 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.

[37] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.[38] Of this number, 2,964 firms operated with fewer than 250 employees.[39] 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.[40] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[41] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. Local Exchange Carriers (*LECs*). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[42] is the closest industry with an SBA small business size standard.[43] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[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 that operated in this industry 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 5,183 providers that reported they were fixed local exchange service providers.[48] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[49] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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[38] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[39] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[40] 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.

[41] *Id.*

[42] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[43] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[44] 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.

[45] *Id.*

[46] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[47] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[48] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[49] *Id.*

12. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[50] is the closest industry with an SBA small business size standard.[51] 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 in this industry that operated for the entire year.[53] Of this number, 2,964 firms operated with fewer than 250 employees.[54] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.[55] Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.[56] 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.[57] Wired Telecommunications Carriers[58] 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.[59] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[60] Of this number, 2,964 firms operated with fewer than 250 employees.[61] Additionally, based on Commission data in the 2021 Universal Service Monitoring

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[50] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[51] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[52] *Id.*

[53] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[54] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[55] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[56] *Id.*

[57] 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.

[58] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[59] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[60] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[61] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.[62] Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.[63] 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 Carriers[64] is the closest industry with a SBA small business size standard.[65] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[66] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[67] Of this number, 2,964 firms operated with fewer than 250 employees.[68] Additionally, based on Commission data in the 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.[69] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

15. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[70] 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.[71] Based on industry data, only six cable system operators have more than 677,000 subscribers.[72]

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[62] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[63] *Id.*

[64] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[65] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[66] *Id.*

[67] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[68] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[69] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[70] 47 U.S.C. § 543(m)(2).

[71] *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

(continued….)

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.[73] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers[74] is the closest industry with a SBA small business size standard.[75] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[76] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[77] Of this number, 2,964 firms operated with fewer than 250 employees.[78] 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.[79] Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.[80] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

2. Wireless Carriers

17. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[81] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and

(Continued from previous page)
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).

[72] 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).

[73] 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).

[74] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[75] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[76] *Id.*

[77] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[78] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[79] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[80] *Id.*

[81] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

wireless video services.[82] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[83] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[84] Of that number, 2,837 firms employed fewer than 250 employees.[85] 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.[86] Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.[87] 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."[88] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small.[89] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[90] Of this number, 242 firms had revenue of less than $25 million.[91] 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.[92] Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.[93] Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

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[82] *Id.*

[83] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[84] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[85] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[86] 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.

[87] *Id.*

[88] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[89] *See* 13 CFR § 121.201, NAICS Code 517410.

[90] *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.

[91] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[92] 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.

[93] *Id.*

3. Resellers

19. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.[94] The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.[95] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[96] Mobile virtual network operators (MVNOs) are included in this industry.[97] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[98] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[99] Of that number, 1,375 firms operated with fewer than 250 employees.[100] Additionally, based on Commission data in the 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.[101] Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.[102] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[103] is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[104] Mobile virtual network operators (MVNOs) are included in this industry.[105] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[106] U.S. Census Bureau data for 2017

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[94] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[95] *Id.*

[96] *Id*.

[97] *Id*.

[98] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[99] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[100] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[101] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[102] *Id.*

[103] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[104] *Id.*

[105] *Id*.

[106] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

show that 1,386 firms in this industry provided resale services for the entire year.[107] Of that number, 1,375 firms operated with fewer than 250 employees.[108] Additionally, based on Commission data in the 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.[109] Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.[110] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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 Resellers[111] 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.[112] Mobile virtual network operators (MVNOs) are included in this industry.[113] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[114] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[115] Of that number, 1,375 firms operated with fewer than 250 employees.[116] 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.[117] Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.[118] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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[107] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[108] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[109] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[110] *Id.*

[111] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[112] *Id.*

[113] *Id*.

[114] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[115] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[116] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[117] 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.

[118] *Id.*

4. Other 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.[119] 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.[120] 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.[121] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[122] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[123] Of those firms, 1,039 had revenue of less than $25 million.[124] 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

23. The *Report and Order* requires voice service providers to meet certain obligations. These changes affect small and large companies and apply to all the classes of regulated entities identified above. First, all voice service providers must fully respond to traceback requests from the Commission, civil and criminal law enforcement, and the industry traceback consortium 'within 24 hours of receipt of such a request. The voice service provider should respond with information about the provider from which it directly received the call.[125] Small entity voice service providers may need to identify dedicated staff of other professionals to act as a clear point of contact respond to traceback requests in a timely manner.[126]

24. Second, originating voice service providers, and any intermediate or terminating provider immediately downstream from the originate provider, must block calls in certain instances. Specifically, the originating provider must block illegal traffic once notified of such traffic by the Commission through its Enforcement Bureau. In order to comply with this requirement, small entities that are originating providers must block traffic that is substantially similar to the identified traffic on an ongoing basis.[127] When an originating provider fails to comply with this requirement, the Commission may require small entity providers immediately downstream from an originating provider to block all traffic from the

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[119] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[120] *Id.*

[121] *Id*.

[122] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[123] *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.

[124] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[125] *Report and Order* at paras. 21-27.

[126] *Report and Order* at para. 24.

[127] *Id.* at Section III.B.

identified provider when notified by the Commission.[128] As part of this requirement, a notified small entity originating provider must promptly report the results of its investigation to the Enforcement Bureau within 14 days, including, unless the originating provider determines it is either not an originating or gateway provider for any of the identified traffic or that the identified traffic is not illegal, both a certification that it is blocking the identified traffic and will continue to do so and a description of its plan to identify the traffic on an ongoing basis. In order to comply with the downstream provider blocking requirement, all providers must monitor EB Docket No. 22-174 and initiate blocking within 30 days of a Blocking Order being released.[129]

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities … including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[130]

26. Generally, the decisions we made in the *Report and Order* apply to all providers. Treating small providers differently from larger providers would have a significant impact on the success of the rules we adopt today, meaning that fewer consumers would be protected from illegal calls and bad-actor callers would have more opportunities to find ways around these restrictions. However, we did take steps to ensure that small entity and other providers would not be unduly burdened by these requirements. Specifically, we allowed flexibility where appropriate to ensure that small providers, can determine the best approach for compliance based on the needs of their networks. For example, providers have the flexibility to determine their proposed approach to blocking illegal traffic when notified by the Commission and to determine the steps they take to "know the upstream provider."

G. Report to Congress

27. The Commission will send a copy of the *Gateway Provider Report and Order* and *Order on Reconsideration*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[131] In addition, the Commission will send a copy of the *Gateway Provider Report and Order* and *Order on Reconsideration*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Gateway Provider Report and Order* and *Order on Reconsideration* (or summaries thereof) will also be published in the Federal Register.[132]

[128] *Id.*

[129] *Id.*

[130] 5 U.S.C. § 604(a)(6).

[131] 5 U.S.C. § 801(a)(1)(A).

[132] *See id*. § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Eighth Further Notice of Proposed Rulemaking* (*Further Notice*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In order to continue the Commission's work of protecting American consumers from illegal calls, regardless of their provenance, the *Further Notice* proposes and seeks comment on several options to better protect consumers from illegal calls, restore faith in caller ID, and hold voice service providers responsible for the calls they carry. First, the *Further Notice* proposes to require terminating voice service providers to offer, at a minimum, opt-out blocking services of calls that are highly likely to be illegal to consumers without charge.[4] It also seeks comment on whether the Commission should continue to use a non-exhaustive list of factors that voice service providers might consider when blocking based on reasonable analytics or whether further guidance is needed to define the category "highly likely to be illegal."[5] Second, the *Further Notice* proposes to require all voice service providers, rather than just gateway providers, to block calls using a reasonable do-not-originate list.[6] Third, it seeks comment on specific instances where the non-gateway intermediate and terminating providers may be required to block following Commission notification of illegal traffic.[7] Fourth, it seeks comment on the correct SIP Code to use for immediate notification of call blocking to callers, so that callers placing lawful calls can seek redress, and seeks comment on the implementation process and costs for each code.[8] Fifth, it seeks comment on whether, and how, to require display of caller name information when a terminating provider displays an indication that a call received A-level attestation under the STIR/SHAKEN framework.[9] Combining the display of caller name information with the information that the number itself was not spoofed may provide real benefit to consumers. Finally, it proposes to set a minimum forfeiture of

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[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] *Further Notice* at paras. 70-74.

[5] *Id*. For example, in the *Call Blocking Declaratory Ruling*, speaking about analytics that may be used to identify unwanted calls, the Commission provided a non-exhaustive list of factors such as large bursts of calls in a short timeframe, low average call duration; low call completion ratios, and invalid numbers placing a large volume of calls. *Call Blocking Declaratory Ruling*, 34 FCC Rcd at 4888, para 35.

[6] *Further Notice* at paras. 75-78. The Commission includes calls from invalid, unallocated, and unused numbers, as well as numbers for which the subscriber to the number has requested blocking, consistent with our existing rules. *Id.* at paras. 75-76.

[7] *Further Notice* at paras. 79-88.

[8] *Id*. at paras. 89-93.

[9] *Id*. at paras. 94-99.

$11,000 for failure to comply with one of the existing rules, and would allow that forfeiture to be increased up to the maximum for non-common carriers.[10] The *Further Notice* seeks comment on whether a base forfeiture is appropriate in part because bad-actor voice service providers profit from the callers that they protect.[11]

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 201, 202, 227, 227b 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 202, 227, 251(e), 303(r), and 403, and section 7 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274,.

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.[12] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[13] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[14] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[15]

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[16] 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.[17] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[18]

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."[19] The

[10] *Id.* at paras. 100-103.

[11] *Id.* at para. 103.

[12] *See* 5 U.S.C. § 603(b)(3).

[13] *See id.* § 601(6).

[14] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[15] *See* 15 U.S.C. § 632.

[16] *See* 5 U.S.C. § 601(3)-(6).

[17] *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).

[18] *Id.*

[19] *See* 5 U.S.C. § 601(4).

Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[20] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[21]

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."[22] U.S. Census Bureau data from the 2017 Census of Governments[23] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[24] Of this number there were 36,931 general purpose governments (county[25], municipal and town or township[26]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[27] with enrollment

[20] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), 'Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[21] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[22] *See* 5 U.S.C. § 601(5).

[23] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[24] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[25] *See id*. at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[26] *See id*. at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[27] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000; *see also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.[28] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[29]

1. Wireline Carriers

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[30] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services.[31] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[32] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[33]

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[34] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[35] Of this number, 2,964 firms operated with fewer than 250 employees.[36] 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.[37] Of these providers, the Commission estimates that 4,737

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[28] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[29] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

[30] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[31] *Id.*

[32] *Id.*

[33] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[34] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[35] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[36] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[37] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

providers have 1,500 or fewer employees.[38] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[39] is the closest industry with an SBA small business size standard.[40] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[41] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[42] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[43] Of this number, 2,964 firms operated with fewer than 250 employees.[44] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.[45] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[46] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[47] is the closest industry with an SBA small business size standard.[48] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[49] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[50] Of this number, 2,964 firms operated with fewer than

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[38] *Id.*

[39] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[40] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[41] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[42] *Id.*

[43] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[44] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[45] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[46] *Id.*

[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] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[49] *Id.*

[50] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311,

(continued….)

250 employees.[51] 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.[52] Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.[53] 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.[54] Wired Telecommunications Carriers[55] 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.[56] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[57] Of this number, 2,964 firms operated with fewer than 250 employees.[58] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.[59] Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.[60] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications

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https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[51] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[52] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[53] *Id.*

[54] 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.

[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] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[58] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[59] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[60] *Id.*

Carriers[61] is the closest industry with a SBA small business size standard.[62] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[63] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[64] Of this number, 2,964 firms operated with fewer than 250 employees.[65] Additionally, based on Commission data in the 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.[66] 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.

14. *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."[67] 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.[68] Based on industry data, only six cable system operators have more than 677,000 subscribers.[69] 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

[61] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[62] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[63] *Id.*

[64] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[65] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[66] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[67] 47 U.S.C. § 543(m)(2).

[68] *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).

[69] 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).

million.[70] 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.

15. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers[71] is the closest industry with a SBA small business size standard.[72] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[73] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[74] Of this number, 2,964 firms operated with fewer than 250 employees.[75] 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.[76] Of these providers, the Commission estimates that 113 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.

2. Wireless Carriers

16. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[78] 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.[79] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[80] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[81] Of that number, 2,837 firms employed fewer than 250

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[70] 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).

[71] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[72] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[73] *Id.*

[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: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[75] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[76] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[77] *Id.*

[78] *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.

[79] *Id.*

[80] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[81] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312,

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employees.[82] 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.[83] Of these providers, the Commission estimates that 715 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.

17. ***Satellite Telecommunications.*** This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[85] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small.[86] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[87] Of this number, 242 firms had revenue of less than $25 million.[88] 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.[89] Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.[90] Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

3. Resellers

18. *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.[91] 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

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https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[82] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[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, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[86] *See* 13 CFR § 121.201, NAICS Code 517410.

[87] *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.

[88] *Id*. The 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.

[89] 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.

[90] *Id.*

[91] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

satellite) to businesses and households.[92] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[93] Mobile virtual network operators (MVNOs) are included in this industry.[94] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[95] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[96] Of that number, 1,375 firms operated with fewer than 250 employees.[97] 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.[98] Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.[99] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities

19. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[100] 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.[101] Mobile virtual network operators (MVNOs) are included in this industry.[102] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[103] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[104] Of that number, 1,375 firms operated with fewer than 250 employees.[105] Additionally, based on Commission data in the

[92] *Id.*

[93] *Id*.

[94] *Id*.

[95] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[96] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[97] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[98] 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.

[99] *Id.*

[100] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[101] *Id*.

[102] *Id.*

[103] *See* 13 CFR § 121.201, NAICS Code 517911.

[104] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[105] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

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.[106] Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.[107] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers[108] 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.[109] Mobile virtual network operators (MVNOs) are included in this industry.[110] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[111] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[112] Of that number, 1,375 firms operated with fewer than 250 employees.[113] 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.[114] Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.[115] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

4. Other 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.[116] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from,

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[106] 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.

[107] *Id*.

[108] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[109] *Id.*

[110] *Id*.

[111] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[112] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[113] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[114] 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.

[115] *Id.*

[116] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

satellite systems.[117] 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.[118] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[119] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[120] Of those firms, 1,039 had revenue of less than $25 million.[121] 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. The *Further Notice* proposes and seeks comment on imposing several obligations that may include recordkeeping or reporting requirements on small entity providers. Specifically, the *Further Notice* proposes to require all terminating voice service providers to offer, at a minimum, opt-out blocking of calls that are highly likely to be illegal.[122] The *Further Notice* also proposes that small and other voice service providers block calls using a reasonable do-not-originate (DNO) list.[123] This would require voice service providers that do not already engage in this type of blocking, either voluntarily or in order to comply with our existing rule for gateway providers,[124] to either obtain or create such a list and ensure that the list remains up to date. The *Further Notice* seeks comment on limiting the SIP code for use for immediate notification to callers to a single code, with focus on SIP Code 608 or 603+, and seeks comment on the costs and timeline to implement and comply with the proposed rule.[125] Additionally, a requirement to display caller name information to consumers when displaying an indication of A-level attestation may include a recordkeeping or reporting requirement.[126] Depending on the exact mechanism chosen, small entity and other terminating providers that wish to display an indication of attestation may need to access a caller name database or other list in order to comply. Finally, the *Further Notice* proposes specific forfeiture costs to small and other providers for failure to comply with call blocking rules.[127] We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Further Notice*.

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[117] *Id.*

[118] *Id*.

[119] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[120] *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.

[121] *Id.* The 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.

[122] *Further Notice.* at paras. 70-74.

[123] *Id.* at paras. 75-78.

[124] 47 CFR § 64.1200(k)(2), (o).

[125] *Further Notice* at paras. 89-93.

[126] *Id.* at paras. 94-99.

[127] *Id.* at paras. 100-103.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[128]

24. The *Further Notice* seeks comment on the burdens that would be imposed on small and other voice service providers if we adopt rules in the areas where the Commission seeks comment. The Commission welcomes comments on any of the issues raised in the *Further Notice* that will impact small providers. In particular, the *Further Notice* seeks comment on whether the existing safe harbors for blocking are sufficient, or whether additional safe harbor protection is necessary.[129] Safe harbor protections are likely to be particularly important to smaller providers that may otherwise be concerned about liability if they block calls in error. The *Further Notice* also seeks comment on multiple options for immediate notification of callers[130] and methods for providing caller name information to consumers.[131]

25. Including alternative options to the proposals discussed in the *Further Notice* ensures that the Commission can appropriately balance the burdens to small entity providers, with the benefit to callers placing lawful calls and consumers. Among the alternatives considered in the *Further Notice* is whether there is a benefit to requiring small and other terminating providers that currently offer opt-in blocking to switch to opt-out blocking.[132] It also considers whether to require all voice service providers to block based on a reasonable DNO list, rather than limiting the requirement to certain voice service provider types, because the content of the list may vary depending on the provider.[133] The *Further Notice* seeks comment on alternatives to ways small and other providers can provide an accurate caller name display, such as using Caller ID name (CNAM) databases or other sources for caller information, and requiring specific technology for caller name display or adopting a technology-neutral standard.[134] Allowing for this flexibility may make it easier for small entities that are terminating providers to comply with the proposed rules. The *Further Notice* also seeks alternatives to the proposed base forfeiture amount, such as requiring the voice service provider to repay any profits from fees paid by downstream providers.[135]

26. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *Further Notice*, and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities.[136] Additionally, the Commission seeks comment on whether any of the costs associated with any of the

[128] 5 U.S.C. § 603(c)(1)-(4).

[129] *Further Notice* at paras. 72-74.

[130] *Id.* at paras. 89-93.

[131] *Id.* at paras. 94-99.

[132] *Id.* at para. 72.

[133] *Id.* at para. 78.

[134] *Id.* at paras. 94-99.

[135] *Id.* at para. 103.

[136] *Id.* at para. 114.

proposed requirements to eliminate unlawful robocalls can be alleviated for small entities.[137] The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *Further Notice* and this IRFA.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

27. None.

[137] *Id.*

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls,* CG Docket No. 17-59; *Call Authentication Trust Anchor*, WC Docket No. 17-97; Seventh Report and Order in CG Docket CG 17-59 and WC Docket 17-97, Eighth Further Notice of Proposed Rulemaking in CG Docket 17-59, and Third Notice of Inquiry in CG Docket 17-59 (May 18, 2023)

If you are tired of us developing new ways to combat robocalls, rest assured that I am tired of being in this business. But scam artists are creative. Whenever we shut down one calling fraud scheme, another can always pop up somewhere else.

However, in the last two years we have stopped more big robocall schemes than at any point in our history. We shut down a flood of junk calls about auto warranties. We shut down a fraudulent calling scheme involving student loans. And we shut down a predatory mortgage lending scheme responsible for millions of robocalls.

Just last week, we shut down a gateway provider pumping robocalls in from overseas. This was a first-of-its kind action by the Federal Communications Commission. We found a carrier responsible for so much junk traffic, we told all other carriers to block its calls. This won't be the last time we use this hammer-like approach. That's because the data suggest that an increasing amount of robocalls heading to our homes and businesses are coming from abroad.

Today we build on these efforts by clarifying some of our rules designed to put a halt to illegal robocalls. We make clear that all carriers have a duty to respond to traceback requests in 24 hours so we can figure out who is behind any new rash of illegal robocalls. We make clear that when we ask originating carriers to mitigate junk calls from a specific provider we mean block them—all of them. And we make clear that the duty to know your upstream provider applies to every carrier in the call path.

On top of this, we seek comment about requiring additional analytics that can help identify suspect traffic on our networks and ask about other tools used to block robocalls, like setting up honeypots to catch those behind the scams.

So no rest for the weary. We are simply not going to stop until we get this junk off the line.

Thank you to the Robocall Response Team and those at the agency who worked on this effort, including Alejandro Roark, Edyael Casaperalta, Mark Stone, Aaron Garza, Kristi Thornton, Karen Schroeder and Jerusha Burnett of the Consumer and Governmental Affairs Bureau; Mary Romano, Kristi Thompson and Daniel Stepanicich of the Enforcement Bureau; Elizabeth Drogula, Matt Collins, Zach Ross, Jonathan Lechter and Jesse Goodwin of the Wireline Competition Bureau; David Furth, Kenneth Carlberg, John Evanoff, Gerald English and Rasoul Safavian of the Public Safety and Homeland Security Bureau; William Richardson, Chin Yoo, Richard Mallen, Valerie Hill, Derek Yeo and Andrea Kearney of the Office of General Counsel; Virginia Metallo, Eugene Kiselev, Mark Montano and Michelle Schaefer of the Office of Economics and Analytics; and Joycelyn James of the Office of Communications Business Opportunities.

STATEMENT OF COMMISSIONER GEOFFREY STARKS

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls,* CG Docket No. 17-59; *Call Authentication Trust Anchor*, WC Docket No. 17-97; Seventh Report and Order in CG Docket CG 17-59 and WC Docket 17-97, Eighth Further Notice of Proposed Rulemaking in CG Docket 17-59, and Third Notice of Inquiry in CG Docket 17-59 (May 18, 2023)

Unwanted and illegal calls continue to plague Americans, interrupting our days and nights and targeting our most vulnerable populations. This persistent issue can't be overcome with a single effort. That's why the Commission's work to combat robocalls can be defined as steady and multi-pronged. To be sure, today, we adopt our seventh order, eighth FNPRM, and third NOI in five years. Each builds on the last, as we take our learnings and apply them going forward. And we've focused our actions on illegal callers, and the bad actor providers that shield them; on addressing unlawful spoofing through STIR/SHAKEN, and requiring those providers who cannot fully implement it to develop alternate mitigation programs. Today's item strengthens both of these features: it builds on our prior rules, and it attacks the robocall problem from all sides.

A year ago, we imposed a robust set of requirements on gateway providers, to stop robocalls from reaching our domestic networks. Just last week, pursuant to those rules, the Enforcement Bureau ordered providers to block and cease accepting traffic from international gateway provider One Eye.[1] Today, we extend many of these gateway provider requirements to all voice service providers. We will require all voice service providers to fully respond within 24 hours to traceback requests from the broad governmental and industry effort combatting robocalls – the Commission, civil and criminal law enforcement, and the Industry Traceback Group. We also extend our mandatory call blocking requirements, bringing *all* traffic that transits the U.S. network under our call blocking rules, as recommended by 51 state attorneys general. With all traffic subject to our blocking rules, bad actors should no longer be able to hide within the call path.

In addition to imposing new requirements today, we also seek comment on proposed further requirements, continuing to build off our prior experience. Earlier this year, in our March order on caller ID authentication, we set a hefty per-call max forfeiture for failure to block. In today's item, we propose a complementary approach – a new base forfeiture for any voice service provider that fails to take affirmative, effective measures to prevent its customers from using its network to originate illegal calls. All providers must know their customers and do their diligence. Backing up these requirements with real, bottom-line fines is a strong, proven incentive.

Thank you to the Chairwoman for her leadership on this difficult issue, and to the Commission staff for their good and hard work on this item. I'm glad to support it.

[1] *In the Matter of One Eye LLC*, Final Determination Order, EB-TCD-20-00031678, EB Docket No. 22-174 (May 11, 2023), https://docs.fcc.gov/public/attachments/DA-23-389A1.pdf.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	

ORDER

Adopted: May 23, 2023 **Released: May 23, 2023**

By the Commission:

1. In this Order, the Commission temporarily waives, on its own motion, the application of the budget control mechanism for rate-of-return carriers that receive high-cost universal service support from legacy mechanisms.[1] We adopt instead a budget constraint of 0%, i.e., a full waiver of the budget constraint, for the July 2023 to June 2024 tariff year, and direct the Wireline Competition Bureau (Bureau) to work with the Universal Service Administrative Company (USAC), the administrator of the federal Universal Service Fund (USF or Fund), to implement the budget control mechanism using 0%.

2. *Background*. Rate-of-return carriers that rely on traditional legacy support mechanisms are eligible for High Cost Loop Support (HCLS) and Connect America Fund Broadband Loop Support (CAF BLS). HCLS provides support to carriers with high loop costs based on the extent that an individual company's cost per loop exceeds the national average cost per loop.[2] CAF BLS supports voice and broadband-only lines to the extent that the carrier's interstate common line and broadband-only line costs (i.e., revenue requirements) exceed its revenues.[3] In the *USF/ICC Transformation Order*, the Commission adopted an overall budget for the high-cost universal service program, including a $2 billion annual budget for rate-of-return carriers.[4] To ensure that the support distributed to rate-of-return carriers did not exceed $2 billion annually, the Commission subsequently adopted a "self-effectuating mechanism"—known as the budget control mechanism—to enforce the rate-of-return budget by reducing HCLS and CAF BLS claims as necessary to meet the budget constraint.[5] The Commission subsequently

[1] 47 CFR §§ 54.901(f), 54.1310(d); *see also id*. § 1.3 (Commission may waive its rules on its own motion).

[2] 47 CFR Part 54, Subpart M.

[3] *Id*. § 54.901.

[4] *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, para. 126 (2011) (*USF/ICC Transformation Order*); *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[5] *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3143, para. 146 (2016) (*2016 Rate-of-Return Reform Order*). Because support amounts for the two other types of rate-of-return carriers, model-based (Affordable Connect America Cost Model) and Alaska Plan, are fixed, the budget control mechanism only affects legacy carriers, i.e., those carriers receiving CAF BLS.

adopted a guaranteed minimum so that no carrier's total legacy support in any year would fall below its CAF BLS forecast for that year.[6]

3. The budget control mechanism is designed to impose financial discipline on carriers receiving legacy rate-of-return support and to provide stability to the Fund.[7] In operation, the budget control mechanism ensures that overall rate-of-return carrier support increases each year by no more than the rate of inflation. Therefore, while some carriers' support will increase and others may decrease, depending on a carrier's revenue requirement, the total amount of support for legacy rate-of-return carriers increases annually based on inflation.

4. On April 3, 2023, NTCA — the Rural Broadband Association (NTCA), in anticipation that USAC would announce a significant budget control adjustment factor, filed a letter with the Commission.[8] While not formally requesting a waiver of the budget constraint, NTCA put forth several reasons justifying such a waiver.[9] NTCA, among other things, argues that "substantial ensuing cuts in the CAF BLS and HCLS support [resulting from the budget control adjustment factor] would undermine the efforts of hundreds of small providers to fulfill and sustain the mission of delivering better broadband to millions of rural Americans at affordable rates."[10]

5. Based on carrier filings, USAC announced on May 1, 2023 that the projected budget control adjustment factor for July 2023 to June 2024 would be 0.8165.[11] This means the projected total support (including true-ups) for legacy rate-of-return carriers for July 1, 2023 to June 30, 2024 will exceed the budget by approximately 18.35%.[12] To determine each carrier's support, USAC calculates a pro rata reduction for carrier support projections to ensure that total support remains within the budget constraint but then ensures that no carrier's support goes below the minimum threshold for that carrier.[13]

6. *Discussion*. On our own motion, we waive the budget constraint and reduce it to 0% for the 2023-2024 tariff year. We find a waiver is in the public interest given the substantial reduction in support that would result from imposition of the budget constraint, as well as the unique and continued cash flow and other economic challenges carriers face as they emerge from the pandemic.

7. Generally, the Commission's rules may be waived for good cause shown.[14] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[15] In addition, the Commission may take into account considerations

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[6] *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11922-23, para. 95 (2018) (*December 2018 Rate-of-Return Reform Order*).

[7] *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3143, para. 146; *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11919-20, paras. 86-87.

[8] Letter from Michael Romano, Executive Vice President, NTCA to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90 et al., at 1 (filed Apr. 3, 2023) (NTCA Letter).

[9] *Id*. at 7.

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

[11] *See* USAC, 2023-2024 Budget Analysis (rel. May 1, 2023), https://www.usac.org/high-cost/resources/rules-orders/budget-control-mechanism/ (USAC Budget Analysis).

[12] *Id*. The Commission waived the budget control mechanism for both the 2021 and 2022 tariff years, citing the significant burden to rate-of-return carriers during the pandemic. *See Connect America Fund*, WC Docket No. 10-90, Order, FCC 22-32, at para. 5, 10 (rel. May 10, 2022) (*2022 BCM Order*). USAC projected a potential 8.6% constraint in July 2021 and a 14% constraint in July 2022. *Id.*

[13] *See id*. at para. 5.

[14] 47 CFR § 1.3.

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

of hardship, equity, or more effective implementation of overall policy on an individual basis.[16] 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.[17]

8. Absent a waiver, the projected budget control reduction factor would exceed 18%, resulting in a substantial reduction in support for most legacy rate-of-return carriers at a time when they continue to face cash flow issues and increased expenses as they emerge from the pandemic. The Commission's rules expect that carriers would have an opportunity to make up any reduction to CAF BLS through higher consumer broadband-only revenues.[18] Reduced support could therefore lead to increased prices to consumers as carriers seek to offset the gap in funding. With an 18.35% reduction factor, carriers, on average, would be required to impute a monthly rate of $73 for broadband-only connections, up from $42 per month.

9. The growth in projected support by carriers is due, in part, to an increased conversion of voice lines to broadband-only lines,[19] which receive a higher support amount, and an increase in the number of new customers subscribing to broadband-only lines,[20] particularly given population migration during the pandemic to rural areas, many of which are served by legacy rate-of-return carriers.[21] Even as we emerge from the pandemic and workers increasingly are returning to the office, the importance of teleworking remotely and having increased access to telehealth in hard-to-serve areas remains.[22] The demand for broadband service at ever faster speeds will thus likely continue in the upcoming tariff year.[23]

10. Moreover, even though the budget control mechanism annually provides an upwards adjustment to account for inflation, it does not fully account for increased costs in this instance because the inflation factor is backward looking. For instance, the inflation adjustment for the budget control mechanism for the relevant time period was 4.2%.[24] Projected CAF BLS, though, is forward looking (i.e., based on projected costs), and today's projected costs account for the current inflation rate of 7%.[25]

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

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

[18] *See* 47 CFR §§ 54.901(a)(2)(ii), (e), 69.132. Carriers may forgo the lost revenue and choose not to increase prices to its consumers, but our rules would nonetheless impute revenue at the highest allowable rate. *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3123-24, para. 94.

[19] *See* 47 CFR § 54.901(g) ("[A] consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service . . . .").

[20] *See* NTCA Letter at 2, 4 (discussing increases in broadband subscriptions in recent years among its members and estimating that over the past two years "standalone broadband connections grew by nearly 20% . . . with 7% coming from new customers").

[21] *Id*. at 2 (discussing population growth in rural areas, citing a recent report by the United States Department of Agriculture's Economic Research Service) (citation omitted).

[22] *Id*. at 3 ("Although telehealth spikes from the COVID-19 pandemic have subsided, overall usage is higher than before the pandemic – indicating a fundamental shift in how Americans interact with their healthcare providers . . . . Similarly, although many workers are returning to offices on a more frequent basis, telework arrangements have become far more common and, in many workplaces, remote working for at least part of each week appears to be an ensconced practice emerging from the pandemic.").

[23] *See, e.g.*, NTCA Letter at 5 (comparing results of the 2019 and 2022 NTCA member surveys, which shows a 21% increase in the number of customers that could on average receive 100 Mbps service or greater).

[24] *See* USAC Budget Analysis, Demand Calcs tab notes.

[25] *See* Bureau of Economic Analysis, News Release: Gross Domestic Product, First Quarter 2023, Table 4: Price Indexes for Gross Domestic Product and Related Measures: Percent Change from Preceding Period (rel. Apr. 27, 2023), https://www.bea.gov/sites/default/files/2023-04/gdp1q23_adv.pdf.

Given that CAF BLS and HCLS help to recover costs already incurred, the impact of inflation and increased costs due to supply chain constraints "will be incorporated into the costs that providers must recover for years to come even . . . as the nation emerges from the pandemic."[26] Reductions or disruptions to CAF BLS and HCLS support resulting from application of the budget control mechanism "can introduce significant cash flow concerns" for rate-of-return carriers and potentially lead to increased rates for rural consumers to offset any reductions in universal service support.[27] Accordingly, while we remain committed to maintaining financial discipline in our USF support programs, we are hesitant to apply the budget control mechanism at this juncture, which could jeopardize consumer access to broadband service in rural areas at rates reasonably comparable to their urban counterparts.

11. Taken together, we find the current circumstances pose significant burdens on legacy carriers, which would be exacerbated should there be a sizable reduction in support. To ensure these small companies are not subject to financial strain, which could lead to significant increases in rates imposed on rural consumers, we find it is in the public interest to waive the application of our budget constraint rules. Granting a waiver here is also consistent with relief the Commission provided last year and in other contexts in acknowledgment of the unprecedented challenges raised as we continue to emerge from the pandemic.[28]

12. We recognize that lowering the budget control mechanism percentage will put increased pressure on the Fund. The Commission has long recognized the need to balance the principles of section 254(b) to ensure that support is sufficient while avoiding an excessive burden on all ratepayers that contribute to the Fund. The Commission must take into account both the affordability of, and support for, services in high-cost areas and the demands on areas where customers are net Fund contributors.[29] In these particular circumstances, we find the benefits of waiving the budget control mechanism for the 2023-2024 tariff year outweigh the limited impact on the Fund given the significant reduction in support that would result from imposition of the budget constraint, ongoing challenges as we emerge from the pandemic, and the importance of providing broadband services during this unprecedented time.

13. Separately, the Commission remains committed to re-evaluating the deployment obligations and funding levels for such providers that will apply in 2024.[30] In addition, the recent report on the "Future of the Universal Service Fund" recommends the Commission initiate a proceeding to consider, among other things, "when and under what circumstances continuing [high-cost] support is necessary to develop, sustain, and improve broadband operations and how best to determine which carriers may need such support and in what amounts" in light of the substantial investments in broadband infrastructure anticipated under the Broadband Equity, Access and Deployment program administered by the National Telecommunications and Information Administration (NTIA).[31] These proceedings will

[26] NTCA Letter at 5-6.

[27] *Id*. at 6.

[28] *2022 BCM Order* at para. 1.

[29] *See, e.g.*, *High-Cost Universal Service Support et al*., WC Docket No. 05-337, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4087, para. 28 (2010); *USF/ICC Transformation Order*, 26 FCC Rcd at 17682-83, paras. 57-58.

[30] *See Connect America Fund et al*., WC Docket No. 10-90 et al., Notice of Proposed Rulemaking, FCC 22-35, at para. 58 (rel. May 20, 2022). Providers receiving CAF BLS support are subject to mandatory obligations to deploy broadband service of at least 25/3 Mbps to a carrier-specific number of locations by the end of 2023. *See December 2018 Rate-of-Return Order*, 33 FCC Rcd at 11926, para. 110.

[31] *See Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report, FCC 22-67, at para. 41 (rel. Aug. 15, 2022); 47 U.S.C. § 1702(b); Department of Commerce, NTIA, Broadband Infrastructure Program, Notice of Funding Opportunity (2021), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf.

likely result in updates to the Commission's budget for high-cost support, which further supports relief from strictly applying the budget control mechanism into 2024.

14. We direct the Bureau to work with USAC to calculate the budget control mechanism at 0%. Additionally, to simplify the budget control mechanism this funding year, we also waive, on our own motion, the requirement that the budget control mechanism be adjusted effective January 1, 2024 to take into account the rural growth factor for the HCLS cap.[32]

15. Accordingly, IT IS ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, that sections 54.901(f) and 54.1310(d), 47 CFR §§ 54.901(f), 54.1310(d), ARE WAIVED to the extent described above.

16. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[32] 47 CFR § 54.1310(d).

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

In the Matter of	)	
	)	
Application for Review of	)	
	)	
Tanana Chiefs Conference	)	
Fairbanks, AK	)	
	)	
Rural Health Care Universal Service	)	WC Docket No. 02-60
Support Mechanism	)	

ORDER ON REVIEW

Adopted: May 25, 2023 **Released: May 26, 2023**

By the Commission:

I. INTRODUCTION

1. By this Order on Review, we grant in part and deny in part an application for review submitted by the Tanana Chiefs Conference (TCC).[1] TCC seeks review of a Wireline Competition Bureau (Bureau) decision that denied its requests: (1) to permit the filing of three TCC funding year 2016 Rural Health Care (RHC) Program requests for support after the application filing deadline; and (2) to fully fund all of TCC's RHC Program funding year 2016 commitments despite a proration requirement triggered when program-wide demand exceeded available support.[2] For the reasons set forth below, we waive the application filing deadline as it applies to the three TCC funding year 2016 requests but maintain the requirement to prorate TCC's funding commitments for funding year 2016.

II. BACKGROUND

2. Eligible health care providers may apply for reduced rates on eligible telecommunications, advanced telecommunications and information services through the RHC Program.[3] The Commission's rules generally require health care providers to file new funding requests for each

[1] *See* Application for Review of Tanana Chiefs Conference, WC Docket No. 02-60 (filed Feb. 14, 2020), https://www.fcc.gov/ecfs/document/102240387929324/1 (Application for Review). We review applications for review of action taken on delegated authority pursuant to section 5(c)(4) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. § 155(c)(4). The Wireline Competition Bureau issued a public notice requesting comment on the Application for Review. *Wireline Competition Bureau Seeks Comment on Tanana Chiefs Conference Application for Review*, WC Docket No. 02-60, Public Notice, 35 FCC Rcd 1897 (WCB 2020) (*AFR Public Notice*). The *AFR Public Notice* prompted 25 comments, primarily from communities and health care organizations located in the areas of Alaska served by TCC, and one set of reply comments from TCC. A complete list of commenting parties is included as Attachment A to this Order on Review.

[2] *See Request for Review and Waiver of a Decision by the Universal Service Administrator by Tanana Chiefs Conference, Fairbanks, AK, Interior Alaska Regional Health Consortium, Rural Health Care Universal Service Support Mechanism,* WC Docket No. 02-60, Order, 35 FCC Rcd 482 (WCB 2020) (*Bureau Order*).

[3] The RHC Program consists of two support mechanisms: the Telecommunications (Telecom) Program and the Healthcare Connect Fund (HCF) Program, 47 CFR §§ 54.602(a) and (b) (2018). The Commission's rules cited in this Order on Review are those applicable in all cases to the TCC funding requests and commitments at issue in this proceeding.

funding year in order to receive support.[4] The Commission's rules also direct the Universal Service Administrative Company (USAC), the RHC Program administrator, to open a filing window for RHC Program applications and to treat all eligible health care providers filing within the window period as if their applications were simultaneously received.[5] Applicants must submit their requests prior to the close of the application filing window in order to be considered for RHC Program funding.[6] Pursuant to section 54.675(f) of the Commission's rules in place during funding year 2016, if demand for support during a filing window period exceeded the RHC Program's funding cap, USAC was obligated to apply a pro rata reduction in support to all those requests received during that filing window period.[7]

3. For the first time in RHC Program history, in funding year 2016 there were pre-established application filing windows for the RHC Program.[8] Before then, applications had been accepted on a rolling basis through the end of each funding year.[9] In March 2016, USAC opened a filing window period for funding year 2016 that ended on June 1, 2016.[10] Because RHC Program funding remained available at the end of that initial filing window, in August 2016 the Bureau released a public notice providing a schedule for additional filing windows in funding year 2016.[11] The schedule called for a second filing window period from September 1, 2016 through November 30, 2016, and then "anticipate[d]" a third filing window period from February 1, 2017 through April 30, 2017 "based on historic demand trends" but "assuming demand [did] not exceed the cap during the second filing window period."[12] Because demand for RHC Program support during the second filing window period did exceed the total amount available for the RHC Program, no third filing window was opened.[13] The excess demand also resulted in a 7.5% prorated reduction of all qualifying funding requests submitted during the second filing window period.[14]

4. TCC is a Fairbanks, Alaska-based, nonprofit intertribal consortium that provides health care services through regional and village health clinics serving approximately 15,000 Alaska Natives in

[4] 47 CFR §§ 54.623(a); 54.675(d) (2018). Health care providers that have received a multi-year funding commitment in the HCF Program are not required to file funding requests after the first year. 47 CFR § 54.675(d) (2018).

[5] 47 CFR § 54.675(c)(2) (2018).

[6] 47 CFR § 54.675(c)(4) (2018) (providing that the deadline to submit a funding request is June 30 for the funding year that begins on the previous July 1).

[7] *See* 47 CFR § 54.675(f) (2018). In 2019, the Commission replaced the proration requirement with a system that prioritizes support based on rurality tiers and the degree to which the rural area is medically underserved. *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7385-90, paras. 107-16 (2019) (*Promoting Telehealth Report and Order*); 47 CFR § 54.621(b).

[8] *See Wireline Competition Bureau Provides a Filing Window Period Schedule for Funding Requests Under the Telecommunications Program and the Healthcare Connect Fund*, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588, 9590 (WCB 2016) (*Filing Window Public Notice*).

[9] *See id.* at 9589.

[10] *Bureau Order*, 35 FCC Rcd at 484, para. 4. After the close of the first filing window, USAC continued to accept funding requests on a rolling basis and made funding commitments to eligible participants on a "first-come, first-served" basis. *Id*.

[11] *See Filing Window Public Notice*, 31 FCC Rcd at 9590-91.

[12] *Id*. at 9591.

[13] *See Bureau Order*, 35 FCC Rcd at 484, para. 4.

[14] *See id*.

the state's interior region.[15] For funding year 2016, TCC timely filed applications for Telecom Program support for 27 of its clinics within the second filing window period.[16] Due to second filing window demand's exceeding the available funding, TCC's funding requests were prorated and the resulting funding commitments reduced by 7.5%.[17] TCC, however, did not file funding requests for the three remaining clinics in its consortium during the first or second filing window (the Omitted Clinics).[18] TCC asserts that the applications for the Omitted Clinics were not filed "due to inadvertent errors, as well as misunderstandings concerning the USAC-imposed filing windows."[19] TCC discovered its omissions in late March 2017, several months after the closing of the second filing window.[20] When it attempted to submit applications for the Omitted Clinics, TCC was advised by USAC that the filing window for funding year 2016 was closed, that it could not submit applications after the close of the window, and that it was not possible for USAC to waive the filing deadline rules.[21] On April 28, 2017, TCC filed a request for review of USAC's decision not to allow TCC to file requests for support for the Omitted Clinics or, in the alternative, that the Commission waive the filing window period deadline.[22] TCC also requested waiver of the proration requirement to permit full funding of each of its funding year 2016 requests.[23] The Bureau denied TCC's requests after concluding that TCC failed to present special circumstances that would warrant the relief sought.[24]

5. TCC now seeks review of the Bureau's decision. TCC maintains that, in denying its requests, the Bureau abused its discretion by deviating from the Commission's rural health care policy,[25] ignoring "binding legal precedents" despite granting waivers to "similarly situated applicants,"[26] disregarding TCC's statutory and public interest arguments,[27] and misstating material facts raised by TCC.[28] TCC asks that we reverse the Bureau's denials and permit TCC to submit applications for the Omitted Clinics and waive the prorated funding rule as it applies to each of TCC's funding year 2016 funding requests.[29]

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[15] Application for Review at 2. Attachment B to this Order on Review lists the 30 health care providers that comprise TCC's consortium.

[16] *Id.* at 4.

[17] *Bureau Order*, 35 FCC Rcd at 485, para. 5.

[18] Application for Review at 4. The Omitted Clinics are Hughes Village Health Clinic, Huslia Village Health Clinic, and Chalkyitsik Village Clinic.

[19] Application for Review at 12. *See also Bureau Order*, 35 FCC Rcd at 485, para. 5 (summarizing TCC's explanation for why it failed to file applications for the Omitted Clinics during the second filing window period).

[20] Application for Review at 4.

[21] *Bureau Order*, 35 FCC Rcd at 485, para. 5.

[22] *See* Request for Review and Waiver by Tanana Chiefs Conference of Decision by the Universal Service Administrative Company, Interior Alaska Regional Health Consortium, WC Docket No. 02-60, at 1 (filed Apr. 28, 2017) (Request for Review and Waiver).

[23] *See id*. at 2.

[24] *See Bureau Order,* 35 FCC Rcd at 486, 490, paras. 8, 15.

[25] *See* Application for Review at 8-10.

[26] *See id*. at 11-17.

[27] *See id*. at 18-22.

[28] *See id*. at 22-24.

[29] *See id*. at 1 (requesting that the Commission "grant the relief TCC applied for in its Waiver Request").

III. DISCUSSION

6. *Grant of Application Filing Deadline Waiver Request.* We grant TCC's request to waive the application filing deadline to permit it to file funding year 2016 applications for the Omitted Clinics.[30] TCC asserts that its failure to submit applications for the Omitted Clinics was the result of "misunderstandings and confusion about the filing deadline," which, consistent with precedent, provides the special circumstances required to justify a waiver of the Commission's rules.[31] Although the multiple filing window periods were promoted by the Bureau and USAC through outreach efforts,[32] we find that the Bureau did not take into account the possibility that the transition away from rolling applications and the first-ever implementation of multiple filing windows could confound applicants attempting to understand the new filing requirements and deadlines. Adding to the potential for confusion are the facts that the *Filing Window Public Notice* announcing the multiple filing window periods was issued only days before the second window opened[33] and expressly "anticipate[d]" a third filing window "based on historic demand trends."[34] TCC persuades us that its failure to submit the applications for the Omitted Clinics was a product of this set of special circumstances unique to funding year 2016.[35]

7. Granting the filing deadline waiver request will also advance the public interest. One of the statutory principles guiding implementation of universal service is the provision of access to advanced telecommunications services to rural areas.[36] TCC and several commenting parties described the

[30] Our 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 Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

[31] *See* Application for Review at 11-13 (citing *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry*); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, Oak Forest, IL, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474 (WCB 2008)). *See also* Comments of ADS Advanced Data Services, Inc., WC Docket No. 02-60, at 1 (rec. Apr. 10, 2020) (arguing that funding year 2016 "saw a radical change in program rules for filing after many years of no change, and it is reasonable to classify these changes as special circumstances").

[32] *See Bureau Order,* 35 FCC Rcd at 484, para. 4 (describing the outreach efforts of the Bureau and USAC, including an email blast to all account holders, webinar, newsletter, and website notices regarding the dates of the second filing window period).

[33] The *Filing Window Public Notice* was issued on August 26, 2016. The second filing window opened on September 1, 2016.

[34] *Filing Window Public Notice*, 31 FCC Rcd at 9591.

[35] TCC states that allowing the Omitted Clinics to file their applications "would further the statutory requirements of Section 254(h), as it would enable the [Omitted Clinics] to 'realize the intended benefits of the universal service program.'" Application for Review at 19, *quoting Bishop Perry*, 21 FCC Rcd at 5317, para. 2. We disagree with TCC to the extent that it argues that section 254(h) of the Communications Act requires the Commission to waive its filing deadline rules to accept late-filed applications. *See* Application for Review at 18-20. That conclusion cannot reasonably be drawn from the language of section 254(h), and no Commission precedent supports such a reading. TCC's argument would allow any application to be filed at any time because doing so could potentially result in Universal Service Fund benefits for the applicant. We find that in implementing section 254(h), the Commission has the authority to, and a legitimate interest in, being able to efficiently administer the RHC Program through the use of filing deadlines. *Cf. Bishop Perry*, 21 FCC Rcd at 5327, para. 26 (recognizing that "filing deadlines and minimum processing standards are necessary for the efficient administration of the E-rate program").

[36] *See* 47 U.S.C. § 254(b).

hardships that the Omitted Clinics would suffer if denied access to such services.[37] Although we find that hardship alone is insufficient to warrant a waiver of the application filing deadline, the public interest benefits realized from extending the opportunity for TCC to obtain RHC Program support, when coupled with the special circumstances discussed above, satisfies the requirements for a rule waiver in this case. We also note that in missing the filing deadline, there is no evidence in the record of any waste, fraud, or abuse, a misuse of funds, or a failure to adhere to core program requirements on the part of TCC.[38] We therefore grant the request to waive the application filing deadline as it applies to the three Omitted Clinics to permit TCC to submit funding year 2016 requests for these clinics. In granting this waiver, we take no position on the merits of any of TCC's funding requests that may be filed in response to today's action. USAC is directed to make arrangements with TCC to file any funding year 2016 request for any of the Omitted Clinics within 30 days of the release of this Order on Review. USAC should review any such requests for funding for compliance with Program rules applicable to funding year 2016 before issuing a funding decision.[39]

8. We emphasize the limited scope of today's waiver, which we grant only because of TCC's confusion during the transition from rolling applications to multiple filing window periods. Circumstances of the type that caused TCC's filing deadline confusion have not existed since funding year 2016. Given that there is now generally only one application filing window, the likelihood that future program participants will encounter confusion similar to that experienced by TCC is remote.[40] In any event, nothing in today's decision relieves RHC Program applicants of their obligation to abide by the application filing deadlines set forth in our current rules.[41]

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[37] *See, e.g.*, Application for Review at 10; Comments of Chalkyitsik Village Council, WC Docket No. 02-60, at 2 (rec. Apr. 1, 2020); Comments of Hughes Village Council, WC Docket No. 02-60, at 2 (rec. Apr. 1, 2020); Comments of Huslia Tribal Council, WC Docket No. 02-60, at 2 (rec. Apr. 1, 2020).

[38] *See Bishop Perry*, 21 FCC Rcd at 5324, para. 16 (waiving deadline filing requirement in connection with E-Rate applications).

[39] In the event that USAC finds that TCC's funding requests are in compliance with RHC Program rules, we disagree with the Bureau that there is no funding available to fund TCC's requests. *See Bureau Order,* 35 FCC Rcd at 489, para. 14. The Bureau was correct that there is no longer funding year 2016 funding available to fund TCC's requests, *id.*, and therefore we disagree with TCC that such a conclusion by the Bureau constituted an abuse of discretion meriting reversal of the Bureau's decision. *See* Application for Review at 22-24. Nevertheless, we find there is sufficient funding in the RHC Program's reserve that could be reallocated to TCC in the event USAC were to grant any of its funding requests.

[40] TCC questions the legality of the Bureau's implementation of multiple filing windows for funding year 2016. *See* Application for Review at 21 ("Because the current FCC rule allows for only one filing window and [the Bureau] changed the rule without effectuating the proper waiver procedures, it is [sic] does not appear that the multiple filling windows were even legal."). We find the Bureau acted in accordance with section 254 and pursuant to its delegated authority in adopting the multiple filing windows. In the public notice announcing the multiple filing windows, the Bureau explained that expanding an applicant's filing opportunities "furthers the Commission's goals of supporting healthcare delivery in as many parts of rural America as possible." *Filing Window Public Notice*, 31 FCC Rcd at 9590, *citing* section 254(h)(1)(A) and (h)(2)(A) of the Communications Act, 47 U.S.C. § 254(h)(1)(A), (h)(2)(A). In adopting multiple filing windows, the Bureau properly relied on the Commission's decision to delegate authority to the Common Carrier Bureau (now the Wireline Competition Bureau) "to issue orders interpreting our rules as necessary to ensure that support for services provided to . . . rural health care providers operate to further our universal service goals"). *See id.* at 9590, n.18, *citing Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Third Report and Order, 12 FCC Rcd 22485, 22488-89, para. 6 (1997). In any event, had there been only one filing window for funding year 2016, TCC would have been denied the opportunity to file any of its applications, as the only applications it managed to submit on time were those filed during the second filing window period.

[41] *See* 47 CFR § 54.621(a) (directing USAC to open a filing window with an end date no later than 90 days prior to the start of the funding year).

9. *Denial of Request to Waive Proration Rule.* We deny TCC's request for waiver of the funding proration rule. As an initial matter, we agree with the Bureau that USAC, consistent with the requirements of section 54.675(f) of the Commission's rules, properly applied a 7.5% proration to all granted funding year 2016 commitments filed in the second filing window.[42] Furthermore, we agree with the Bureau that TCC failed to demonstrate the special circumstances necessary to warrant a deviation from the proration requirement contained in section 54.675(f).[43] Indeed, rather than offer special circumstances, TCC advances its justification for a proration rule waiver largely on statutory and policy grounds.[44] First, TCC argues that, in denying relief to TCC, the Bureau improperly ignored the language of section 254(h)(1)(A) of the Communications Act, which "mandates that telehealth services should be available to any rural [health care provider] that requests it."[45] To the extent it relies on section 254(h)(1)(A) for the proposition that full RHC Program funding is statutorily required, TCC is mistaken. The Commission "has never treated the section 254(h)(1)(A) provision as creating an unlimited right to Universal Service Fund support for telecommunications services provided to rural health care providers."[46] Accordingly, we do not find that section 254(h)(1)(A) of the Communications Act mandates full funding of TCC's funding year 2016 requests.

10. TCC next asserts that waiving the proration rule "comports with the Commission's rural health care policy, . . . the crux of which is to *ensure* that rural [health care providers] are *fully funded* for critical telehealth services through the RHC program."[47] We disagree with TCC's premise that Commission policy dictates full RHC Program funding. We have never adopted such a policy for the simple reason that it is not possible to ensure full funding when demand for RHC Program funds exceeds available funding. When facing a funding shortfall, the Commission's rules applicable to funding year 2016 triggered a means to divide the available funding among all eligible applicants in a manner intended not to favor one applicant (TCC or otherwise) over another.[48] As TCC offers no justification to deviate

[42] *See Bureau Order,* 35 FCC Rcd at 489-90, para. 14.

[43] 47 CFR § 54.675(f) (2018).

[44] TCC appears to limit its discussion of special circumstances to those that purportedly support waiving the application filing deadline. *See* Application for Review at 11-14. However, to the extent TCC maintains that the adverse effect that a prorated reduction in funding would have on an applicant provides the special circumstances necessary to warrant a waiver of the proration rule, we disagree. Instead, we agree with the Bureau that "a general claim that a reduction of funding will have a detrimental impact does not constitute special circumstances for waiving the Commission's rules." *Bureau Order,* 35 FCC Rcd at 490, para. 15. Otherwise, every applicant that received prorated support during the second filing window would have grounds to seek a waiver, which clearly contradicts the requirement that a deviation from the general rule requires special circumstances. *See Northeast Cellular*, 897 F.2d at 1166.

[45] Application for Review at 19. *See also, e.g.,* Comments of Maniilaq Association, WC Docket No. 02-60, at 1-2 (rec. Mar. 31, 2020); Comments of Alaska Native Tribal Health Consortium, WC Docket No. 02-60, at 1 (rec. Mar. 31, 2020) (arguing that the *Bureau Order* "did not consider any of the precedents and statutes cited by TCC regarding the granting of filing deadline waivers").

[46] *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7399, para. 136 (rejecting comments arguing that section 254(h)(1)(A) requires the Commission to fully fund without limit all requests for commitments under the Telecom Program). As we explained in 2019, the Commission "would not have adopted . . . a proration mechanism if it believed that it lacked statutory authority to set limits on the Telecom Program." *Id*.

[47] Application for Review at 8 (emphasis added). TCC offers several examples presumably intended to demonstrate the RHC Program policy requirement for full funding, including excerpts from a 2017 letter from former Commission Chairman Pai to Congress, a 2017 Memorandum of Understanding between the Commission and the National Cancer Institute, and a 2017 letter from six U.S. Senators to the Commission. *See id.* at 8-10. None of the examples mentions or describes a requirement to fully fund RHC Program funding requests.

[48] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CCC Docket No. 96-45, 13 FCC Rcd 14915, 14940-41, para. 40 (1998) (adopting the proration approach) (*Fifth Order on Reconsideration)*. As noted above, the Commission subsequently determined

(continued….)

from this impartial approach, we see no basis to waive the proration rules as applied to TCC's funding year 2016 funding requests.[49] In fact, granting a waiver of the proration rules for TCC only would favor TCC over other applicants.

11. For related reasons, we find that the public interest will best be served by denying TCC's request to waive the proration rule. TCC maintains that the Bureau disregarded its public interest justifications for waiving the proration rule by ignoring the adverse effects that prorated funding would have on the health care available to the patients that the TCC clinics serve.[50] We disagree that the Bureau ignored these concerns. Instead, the Bureau properly concluded that prioritizing individual TCC funding needs over the needs of other program participants would be inconsistent with the larger, global public interest benefit realized from strict application of the proration rule, which is a fair and equitable distribution of limited RHC Program funds among all eligible applicants.[51]

IV. ORDERING CLAUSES

12. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 4(i), 4(j), 5(c), and 254(h) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and 254(h), and sections 1.3, 1.115, and 54.722 of the Commission's rules, 47 CFR §§ 1.3, 1.115, and 54.722, that the Application for Review filed by Tanana Chiefs Conference on February 14, 2020 is **GRANTED IN PART** and **DENIED IN PART** to the extent described herein.

(Continued from previous page)
that prioritizing limited RHC Program funding improves upon the proration approach, and adopted rules to that effect. *See Promoting Telehealth Report and Order*, 34 FCC Rcd at 7385, para. 107.

[49] TCC also claims that the Bureau "misstates material facts" in connection with the amount of RHC Program funding available to TCC. Application for Review at 22. First, TCC takes issue with the Bureau's calculations of overall available funding for funding year 2016. *See id*. We reject any suggestion by TCC that the potential availability of reserve funding would provide a special circumstance for granting TCC's request to waive proration with respect to its applications. As discussed herein, USAC properly applied the proration rule for the second filing window and granting a waiver of the proration with respect to just TCC would be inequitable and not in the public interest because it would provide more funding to TCC than other health care providers simply because it sought a waiver of the proration rule. Second, TCC asserts that the Bureau "did not dispute" its claim that "USAC earmarks funding for evergreen contract holders, which is the reason why evergreen contract holders are exempt from competitive bidding," thereby implying that funding for TCC's evergreen contracts is available. *See Application for Review* at 24. TCC, however, is incorrect. USAC does not earmark or otherwise guarantee funding for evergreen contracts. Evergreen contracts are instead multi-year contract exempt from the competitive bidding process during the term of the contract. 47 CFR § 54.642(h)((4) (2018). The Commission's evergreen contract rules benefit health care providers by incentivizing service providers to offer lower rates by entering into longer contract terms and simplifying competitive bidding. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16791 (2012) ("[E]vergreen procedures likely will benefit participating [healthcare providers] by affording them: (1) lower prices due to longer contract terms; and (2) reduced administrative burdens due to fewer required [requests for services].").

[50] Application for Review at 18 (citing discussion of the public interest arguments raised in the Request for Review and Waiver at pages 17-19).

[51] *See Bureau Order,* 35 FCC Rcd at 490, para. 15 (concluding that "it would be inconsistent with the Commission's intent in establishing [the proration] rule to prioritize full funding to the rural health care clinics as part of TCC's consortium over other eligible health care providers that also submitted funding requests during the final filing window for funding year 2016 and received prorated funding"). *See also Fifth Order on Reconsideration*, 13 FCC Rcd at 14940-41, para. 40 (adopting the proration rule that will "ensure fairness and equity to each health care provider applying for universal service support and will not impose an undue administrative burden upon either the applicants or the Administrator"). We again note that while the Bureau properly applied the rules and policies in place during funding year 2016, the Commission has since revised its prioritization and proration rules to better direct funding to applicants with the highest need. *See* 47 CFR § 54.621; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7385, para. 107.

13. **IT IS FURTHER ORDERED** that this Order on Review **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

ATTACHMENT A

Tanana Chiefs Conference Application for Review
Comments and Reply Comments
DA 20-224

Comments

Commenter	Date Filed
Bristol Bay Area Health Corporation	Mar. 30, 2020
Mt. Sanford Tribal Consortium	Mar. 31, 2020
Copper River Native Association	Mar. 31, 2020
Maniilaq Association	Mar. 31, 2020
Alaska Native Tribal Health Consortium	Mar. 31, 2020
Alaska Legal Services Corporation	Mar. 31, 2020
Hughes Village Council	Apr. 1, 2020
Alaska Native Health Board	Apr. 1, 2020
Healy Lake Village Council	Apr. 1, 2020
Nulato Tribal Council	Apr. 1, 2020
Native Village of Stevens	Apr. 1, 2020
Manley Hot Springs Village	Apr. 1, 2020
Circle Tribal Council	Apr. 1, 2020
Eagle Village Council	Apr. 1, 2020
Huslia Tribal Council	Apr. 1, 2020
Native Village of Tetlin	Apr. 1, 2020
Kaltag Tribal Council	Apr. 1, 2020
Koyukuk Village Council	Apr. 1, 2020
Tanacross Village Council	Apr. 1, 2020
Chalkyitsik Village Council	Apr. 1, 2020
Louden Tribal Council	Apr. 1, 2020
Rampart Village Council	Apr. 1, 2020
Native Village of Minto	Apr. 2, 2020
Evansville Tribal Council	Apr. 2, 2020
ADS Advanced Data Services, Inc.	Apr. 10, 2020

Reply Comments

Commenter	Date Filed
Tanana Chiefs Conference	Apr. 17, 2020

ATTACHMENT B

Health Care Providers Comprising
the Tanana Chiefs Conference Consortium*

Health Care Provider (HCP)	HCP No.
Allakaket Village Health Clinic	10715
Evansville Village Health Clinic	10716
Eagle Village Health Clinic	10717
Louden (Galena) Village Health Clinic	10718
Kaltag Village Health Clinic	10722
Koyokuk Village Health Clinic	10723
Manley Village Health Clinic	10724
Minto Village Health Clinic	10726
Nenana Village Health Clinic	10727
Nulato Village Health Clinic	10729
Northway Village Health Clinic	10730
Rampart Village Health Clinic	10731
Ruby Village Health Clinic	10732
Stevens Village Health Clinic	10733
Tetlin Village Health Clinic	10735
Upper Tanana Health Clinic (Tok)	10736
Chief Andrew Issac – FAI-ANC Link	10737
Dot Lake Village Health Clinic	10738
Alatna Village Health Clinic	10739
Circle – CATG	11011
Tanacross Health Clinic	12804
Anaktuvuk Pass Counseling Center	15464
Tanana Health Clinic	15465
Allakaket Mental Health Clinic	16362
UTHC to Tok	10736
Tok Area Mental Health	176991
Healy Lake Health Clinic	10719
Hughes Village Health Clinic	10720
Huslia Village Health Clinic	10721
Chalkyitsik - CATG	11022

* *See* Request for Review and Waiver by Tanana Chiefs Conference of Decision by the Universal Service Administrative Company, Interior Alaska Regional Health Consortium, WC Docket No. 02-60, at Exhibit One (filed Apr. 28, 2017).

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs	)	EB Docket No. 16-330
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 2023 **Released: May 30, 2023**

By the Commission:

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I. INTRODUCTION

1. On February 3, 2015, the Federal Communications Commission (Commission) issued the *2015 Forfeiture Policy Statement*, adopting a "treble damages" methodology to determine forfeitures for violations of Commission rules establishing payment requirements for the Universal Service Fund (USF), Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), North American Numbering Plan (NANP), and federal regulatory fees.[1] The Commission has not applied the *2015 Forfeiture Policy Statement* to an adjudication of USF, TRS Fund, LNP, NANP or federal regulatory fee payment violations. In this Memorandum Opinion and Order, we vacate the *2015 Forfeiture Policy Statement*. This will enable the Commission to continue exercising the discretion needed to issue forfeiture penalties for USF, TRS, LNP, NANP, and regulatory fee payment violations that specifically address the individualized circumstances of each future adjudication, as required by the Communications Act of 1934, as amended (the Act).

2. On March 6, 2015, CTIA-The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL (collectively, Petitioners) filed a Petition for Reconsideration and Petition for Stay of the *2015 Forfeiture Policy Statement*.[2] Because we vacate the *2015 Forfeiture Policy Statement,* we dismiss as moot the Petition for

[1] *See Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Policy Statement, 30 FCC Rcd 1622 (2015) (*2015 Forfeiture Policy Statement*). *See also* 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 52.17, 52.32, 54.706, 64.604(c)(5)(iii) (establishing payment requirements for USF, TRS Fund, LNP, NANP, and federal regulatory fee cost recovery mechanisms).

[2] *See* Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL for Reconsideration of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015), https://www.fcc.gov/ecfs/file/download/DOC-55f611f51b800000-A.pdf?file_name=CTIA.pdf (Petition for Reconsideration); Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL for Stay of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015) (Petition for Stay). After filing the Petition for Reconsideration, CTIA – The Wireless (continued…)

Reconsideration and Petition for Stay filed by the Petitioners. We further find the Petitioners' arguments with respect to treating USF, TRS Fund, LNP, NANP, and federal regulatory fee payment failures as continuing violations are outside the scope of the Commission action for which reconsideration is sought.[3]

II. BACKGROUND

3. On February 3, 2015, the Commission released the *2015 Forfeiture Policy Statement* to further the goals of reforming our processes in ways that enhance the Commission's efficiency and effectiveness.[4] The Commission observed that the existing methodologies for calculating forfeitures for violations of payment requirements for the USF, TRS Fund, LNP, NANP, and federal regulatory fees were unnecessarily cumbersome, prevented us from resolving investigations quickly and efficiently, and constrained our ability to deter non-compliance with the payment requirements.[5] The Commission therefore adopted a "treble damages" methodology to determine forfeitures in order to enable the Commission to resolve investigations more quickly and efficiently.[6]

4. On March 6, 2015, Petitioners filed the Petition for Reconsideration, claiming that the *2015 Forfeiture Policy Statement* must be vacated because it was a substantive rule, which required notice and comment under the Administrative Procedure Act (APA).[7] The Petitioners also claimed that the "treble damages" methodology adopted in the *2015 Forfeiture Policy Statement* was "an arbitrary and capricious effort by the Commission simply to drive forfeiture amounts for payment and reporting violations in connection with certain federal regulatory programs as high as possible."[8] Although the Commission did not adopt a new policy or alter existing policy concerning continuing violations,[9] the Petitioners also claimed that "treating payment and reporting violations as 'continuing violations' conflicts with the statute of limitations."[10]

Association became CTIA, National Cable & Telecommunications Association became NCTA – The Internet & Television Association, and COMPTEL became INCOMPAS. *See* CTIA, NCTA – The Internet & Television Association, United States Telecom Association, and INCOMPAS, Reply, at 2 (Nov. 16, 2016), https://www.fcc.gov/ecfs/file/download/DOC-561bbc1a82000000-A.pdf?file_name=USF%20Forfeiture%20Reply%20Comments.pdf (Petitioners Reply) (indicating that the parties filing reply comments in EB Docket No. 16-330 were the Petitioners).

[3] 47 CFR § 1.106(p)(5).

[4] *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1622, para. 2. *See generally FCC Seeks Comment on Report on Process Reform*, Public Notice, 29 FCC Rcd 1338, 1338 (2014) ("The Report seeks to further the goal of having the agency operate in the most effective, efficient and transparent way possible. It examines the agency's internal operations with the aim of improving the overall functioning of the agency and its service to the public.").

[5] *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 6.

[6] *Id.*

[7] Petition for Reconsideration at 1 (citing 5 U.S.C. § 553(b)).

[8] *Id*. at 2.

[9] The Commission observed that section 503(b)(2) of the Act, 47 U.S.C. § 503(b)(2), limits the Commission's maximum forfeiture authority for each violation or each day of a continuing violation. *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 7. The Commission also restated a principle applied in several enforcement items issued between 2006 and 2015, "[a]s the Commission has observed, each single failure to pay a federal program assessment constitutes a separate violation that continues until the assessment is fully paid." *Id.* (citing *Globcom, Inc*., Order of Forfeiture, 21 FCC Rcd 4710, 4725 & n.105 (2006) (*Globcom Forfeiture Order*)). *See also*, *e.g.*, *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6644, para. 15 (2012) (*Telseven NAL*), Forfeiture Order, 31 FCC Rcd 1629 (2016); *Kajeet, Inc*., Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd. 16684, 16694, para. 21 (2011) (*Kajeet NAL*), *consent decree adopted*, Order, 30 FCC Rcd. 10608 (2015); *NTS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137, 5142, para. 12 (2010) (*NTS NAL*), *consent decree adopted*, Order, 28 FCC Rcd 16515 (2013).

[10] Petition for Reconsideration at 12.

5. On October 17, 2016, the Commission provided an opportunity for public comment on the Petition for Reconsideration.[11] Comments were due on November 9, 2016, and reply comments were due on November 16, 2016.[12] One party, ITTA – The Voice of Mid-Size Communications Companies (ITTA), filed comments, and the Petitioners filed reply comments.[13] ITTA restated the challenges the Petitioners raised in the Petition for Reconsideration.[14] In reply, Petitioners also reiterated the challenges they raised in the Petition for Reconsideration.[15] The Commission has never applied the *2015 Forfeiture Policy Statement*.

III. DISCUSSION

6. We vacate the *2015 Forfeiture Policy Statement* because the Commission has decided not to use a "treble damages" methodology to calculate forfeitures for violations of payment requirements for USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments. The Commission has made this decision because we believe it is more appropriate to determine forfeitures, as adjudicated on a case-by-case basis, by applying the factors in section 503(b)(2)(E) of the Act, our *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission's rules.[16] This will enable the Commission to continue to issue penalties for USF, TRS, LNP, NANP, and regulatory fee payment violations that are closely tailored to the specific circumstances of each individual adjudication.

7. In the *Globcom Forfeiture Order*, the Commission observed that when service providers fail to contribute their equitable share to the payment requirements established by the Commission's rules, they "threaten the integrity and viability" of cost recovery programs implemented by the Commission pursuant to its Congressional mandates.[17] Thus, the "Commission cannot and will not tolerate [the] willful or repeated failure to participate in these programs as required by our rules, and will use its forfeiture authority to penalize violations . . . ."[18] The Commission has repeatedly observed that compliance with its payment requirements is of paramount importance, and the Commission is dedicated to taking the action needed to ensure compliance.[19] The Commission has therefore been committed to

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[11] *See Petition for Reconsideration of Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs Policy Statement*, Public Notice, EB Docket No. 16-330, 2016 WL 6092519 (Oct. 17, 2016).

[12] *See* Federal Communications Commission, Petition for Reconsideration of a Policy Statement, 81 Fed. Reg. 74431 (Oct. 26, 2016).

[13] *See* ITTA – The Voice of Mid-Size Communications Companies, Comments (Nov. 9, 2016), https://www.fcc.gov/ecfs/file/download/DOC-5612c5cc8ec00000-A.pdf?file_name=ITTA%20Comments%20Supporting%20PFR%20of%20Forfeiture%20Policy%20Statement%20As%20Filed%20110916.pdf (ITTA Comments); Petitioners Reply.

[14] *See* ITTA Comments at 2-5.

[15] Petitioners Reply at 1-3.

[16] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *Globcom Forfeiture Order*, 21 FCC Rcd at 4722-23, para. 34 ("the Act instructs the Commission, in establishing a forfeiture, to 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.'"); *Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*1997 Forfeiture Guidelines Order*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[17] *Globcom Forfeiture Order*, 21 FCC Rcd at 4711, para. 2.

[18] *Id.*

[19] *See, e.g.*, *Conquest Operator Servs.*, Order of Forfeiture, 14 FCC Rcd 12518, 12518-19, para. 1 (1999) (stating that "delinquent carriers deprive the universal service support mechanisms of the funds necessary to carry out the goals of this important statutory program" and because delinquent service providers derive a competitive advantage over those service providers making their payments on time, the Commission will not permit service providers "to shirk their responsibilities in an attempt to gain an advantage over their law-abiding competitors" and thus "with this

(continued…)

increasing forfeitures for violations of the USF and other federal payment requirements implemented under the Act, as necessary to deter violations of the payment requirements.[20]

8. In future adjudications of USF, TRS Fund, LNP, NANP and federal regulatory fee payment violations, by applying the factors in section 503(b)(2)(E) of the Act, the *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission's rules, the Commission could conclude that individual circumstances warrant forfeitures that are higher than forfeitures calculated using the "treble damages" methodology adopted in the *2015 Forfeiture Policy Statement*.[21] Likewise, individual circumstances in other adjudications could warrant forfeitures that are lower than forfeitures calculated using the *2015 Forfeiture Policy Statement.* By vacating the *2015 Forfeiture Policy Statement*, the Commission will continue to exercise the discretion needed to issue penalties for USF, TRS, LNP, NANP, and regulatory fee payment violations that specifically address the unique circumstances of each individual adjudication. The benefits of individualized, closely-tailored adjudications outweigh the desire expressed in the *2015 Forfeiture Policy Statement* to resolve investigations more quickly through a "treble damages" methodology. If necessary, the Commission can adjust the forfeiture methodologies for payment violations, consistent with section 503(b)(2)(E) of the Act, our *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission's rules, to address potential issues involving the efficient and timely resolution of payment violation investigations.

9. Because we have vacated the *2015 Forfeiture Policy Statement*, we dismiss as moot the challenges raised in the Petition for Reconsideration.[22] In the Petition for Stay, Petitioners requested that the Commission stay the effectiveness of the *2015 Forfeiture Policy Statement* pending the outcome of the Petition for Reconsideration.[23] Because we resolve the Petition for Reconsideration, we also dismiss the Petition for Stay as moot.[24]

10. Even if we were not vacating the *2015 Forfeiture Policy Statement*, Petitioners' challenges to treating payment and reporting violations as continuing violations would be denied because

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and subsequent orders, we demonstrate our intention to move aggressively to ensure the full and timely funding of the . . . support mechanisms.) (*Conquest Forfeiture Order*).

[20] *See, e.g.*, *Globcom Forfeiture Order*, 21 FCC Rcd at 4724, para. 38 ("We again warn carriers that if the forfeiture methodology described herein is not adequate to deter violations of our USF and TRS rules, our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them"); *Matrix Telecom, Inc*., Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546-47, paras. 7-8 (2000) ("in light of the accumulating record of non-compliance, we are prepared to impose substantially greater forfeitures in the future . . . . based on some variant of [the forfeiture methodology]"), *forfeiture issued*, Forfeiture Order, 16 FCC Rcd. 10553 (2001), *reconsideration denied*, Memorandum Opinion and Order, 16 FCC Rcd 18105 (2001); *Conquest Forfeiture Order*, 14 FCC Rcd at 12528, para. 20 ("those carriers contemplating continued non-payment should be aware that, in light of the accumulating record of non-compliance, we are prepared to impose substantially greater forfeitures in the future" that "will be based on some variant of the [forfeiture methodology].")

[21] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd 17087. In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and circumstances of the violations. *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, para. 30.

[22] *See, e.g.*, *Monroe Cablevision, Inc*., Order on Reconsideration, 16 FCC Rcd 16408, 16409, para. 3 (CSB 2001) (because Petitioner's arguments concerned an issue that was resolved, the petitions for stay and for reconsideration were dismissed as moot); *USA Mobile Commc'ns, Inc*. *II*, Order, 12 FCC Rcd 19582, 19582, para. 1 (WTB, CWD 1997) (dismissing petition for reconsideration as moot because Commission staff provided requested relief).

[23] Stay Petition at 9.

[24] *See Morris Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 3179, 3180, para. 1 (2008) (because application for review was resolved, motion for stay was dismissed as moot), *aff'd,* 566 F.3d 184 (D.C. Cir. 2009); *Monroe Cablevision*, 16 FCC Rcd at 16409, para. 3.

the challenges are outside the scope of the *2015 Forfeiture Policy Statement*.[25] Petitioners argue that a single, brief reference in the *2015 Forfeiture Policy Statement* to the continuing nature of payment rule violations conflicts with the Act's statute of limitations.[26] That reference stated: "As the Commission has observed, each single failure to pay a federal program assessment constitutes a separate violation that continues until the assessment is fully paid."[27] The *2015 Forfeiture Policy Statement* did not purport to and did not change any Commission policies concerning continuing violations. The *2015 Forfeiture Policy Statement* was solely concerned with potential forfeitures for certain payment violations. In the context of addressing the statutory maximum forfeiture authorized under the Act,[28] the Commission merely repeated a policy the Commission established in prior enforcement items issued between 2006 and 2015.[29] This brief mention merely confirmed the Commission's existing, previously established policies concerning continuing violations, and therefore is outside the scope of the *2015 Forfeiture Policy Statement*.[30]

11. Likewise, the *2015 Forfeiture Policy Statement* addressed only forfeitures for certain payment rule violations.[31] Although the Commission did not address Commission reporting requirements,[32] Petitioners nonetheless challenged the application of a continuing violations doctrine to Commission reporting requirements.[33] This was also outside the scope of the *2015 Forfeiture Policy Statement*.[34] Thus, even if we were not vacating the *2015 Forfeiture Policy Statement*, Petitioners challenges to the continuing violations doctrine were outside the bounds of the *2015 Forfeiture Policy Statement* and not a proper subject of reconsideration. In any event, our future consideration of the scope and application of the statutory provision with respect to continuing violations will be based not on the now vacated *2015 Forfeiture Policy Statement* but on a case-by-case basis and after consideration of prior precedent.

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[25] 47 CFR § 1.106(p)(5).

[26] Petition for Reconsideration at 12-15.

[27] *2105 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 7 (citing *Globcom, Inc*., Order of Forfeiture, 21 FCC Rcd 4710, 4725, n. 105 (2006)).

[28] *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1624, para. 7 (citing 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 28 FCC Rcd 10785 (2013)).

[29] *2015 Forfeiture Policy Statement*¸ 30 FCC Rcd at 1624, para. 7. (citing *Globcom Forfeiture Order*, 21 FCC Rcd at 4725 & n.105). *See also*, *e.g*., *Telseven NAL*, 27 FCC Rcd at 6644, para. 15; *Kajeet NAL*, 26 FCC Rcd at 16694, para. 21; *NTS NAL*, 25 FCC Rcd at 5142, para. 12.

[30] 47 CFR § 1.106(p)(5). *See, e.g.*, *Continental Media Group,* LLC, 32 FCC Rcd 10325, 10328, para. 9 (MB 2017) (dismissing argument that was outside the scope of the proceeding); *AT&T Corp. v. All Am. Tel. Co.*, 29 FCC Rcd 6393, 6398, para. 13 (2014) (finding that because issue was not decided in the order under review, the issue was not subject to reconsideration).

[31] *See 2015 Forfeiture Policy Statement*¸ 30 FCC Rcd at 1622, para. 2 ("As part of our ongoing efforts to reform our processes in ways that enhance the Commission's efficiency and effectiveness, we have reevaluated our methodologies for calculating forfeitures for violations of the USF and other federal program payment Rules.") (citing 47 U.S.C. §§ 159, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604(c)(5)(iii)).

[32] To enable administrators to determine assessments for USF, TRS, LNP, NANP and federal regulatory fee payment requirements, Commission rules require that service providers file Telecommunications Reporting Worksheets. *See, e.g.*, 47 CFR §§ 1.1154, 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B).

[33] Petition for Reconsideration at 12-15.

[34] 47 CFR § 1.106(p)(5).

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to section 405 of the Act and section 1.106 of the Commission's rules, the *2015 Forfeiture Policy Statement* is hereby **VACATED**, and the Petition for Reconsideration filed by CTIA-The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL is hereby **DISMISSED** as moot.[35]

13. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act and sections 1.43 and 1.106(n) of the Commission's rules, the Petition for Stay filed by CTIA-The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL is hereby **DISMISSED** as moot.[36]

14. **IT IS FURTHER ORDERED** that pursuant to section 1.103(a) of the Commission's rules, this Memorandum Opinion and Order is effective upon release.[37]

15. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to (a) Thomas C. Power, Senior Vice President and General Counsel, and Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA**,** 1400 16th Street N.W., Suite 600, Washington, D.C. 20036; (b) David H. Solomon, Senior Statesperson, and J. Wade Lindsay, Partner, Wilkinson Barker Knauer, LLP, Counsel to CTIA, 1800 M Street N.W., Suite 800N, Washington, DC 20036; (c) Rick Chessen, Senior Vice President, Legal and Regulatory Affairs and Chief Legal Officer, NCTA – The Internet & Television Association, 25 Massachusetts Ave., N.W., Suite 100, Washington, D.C. 20001; (d) Angie Kronenberg, Chief Advocate and General Counsel, INCOMPAS, 1100 G Street, N.W., Suite 800, Washington, D.C. 20005; and (e) Jonathan Banks, Senior Vice President, Law & Policy, United States Telecom Association, 601 New Jersey Avenue, N.W., Suite 600, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[35] 47 U.S.C. § 405; 47 CFR § 1.106.

[36] 47 U.S.C. § 154(i), (j); 47 CFR §§ 1.43, 1.106(n).

[37] 47 CFR § 1.103(a).

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

In the Matter of	)	
	)	
PayG, LLC d/b/a Skyswitch	)	File No.: EB-IHD-23-00035031
	)	NAL/Acct. No.: 202332080027
	)	FRN: 0027004217

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 26, 2023 **Released: May 30, 2023**

By the Commission:

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I. INTRODUCTION

1. Interstate telecommunications service providers and certain telecommunications providers (collectively, service providers) are required to file accurate information periodically in Telecommunications Reporting Worksheets (Worksheets) and to pay on time and in full assessments for certain cost recovery mechanisms implemented under the Communications Act of 1934, as amended (Act). By underreporting revenues in its Annual Worksheets between 2018 and 2021, and then repeatedly failing to cooperate with documentation production requirements,[1] PayG, LLC, d/b/a/ Skyswitch (PayG or Company) failed to pay or pay fully by payment deadlines obligations required under the Federal Communications Commission's (Commission's or FCC's) rules for the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund, the North American Numbering Plan (NANP), and federal regulatory fees. The undisputed total amount of these various underpayments over the course of these four years was $404,416.28.[2] We therefore propose in this Notice of Apparent Liability for Forfeiture (NAL) a penalty of $1,460,085 for PayG's failures to pay or pay fully on a timely basis payments owed for the USF, TRS Fund, NANP administration and federal regulatory fees in apparent violation of sections 251(e)(2) and 254(d) of the Act and sections 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules.[3]

II. BACKGROUND

A. Legal Framework

2. The Act codifies Congress's historical commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[4] In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user

[1] *See PayG, LLC*, Notice of Apparent Liability for Forfeiture, FCC 22-69, 2022 FCC LEXIS 2984 (Sept. 14, 2022) (*PayG First NAL*) (proposing a forfeiture penalty of $153,000.00 for PayG's failures to cooperate with documentation production requirements, to file accurate Annual Worksheets, and to maintain current information in the Commission Registration System (CORES), in apparent violation of 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 13671 (WCB 2020) (*2021 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350 (WCB 2020) (*2020 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2019 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 34 FCC Rcd 426 (WCB 2019) (*2019 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2018 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 33 FCC Rcd 1801 (WCB 2018) (*2018 Annual Worksheet Instructions*)) (proposed forfeiture paid).

[2] As discussed below, during this four-year period the Company failed to pay $338,701.64 for the USF, $61,382.50 for the TRS Fund, $380.14 for NANP administration, and $3,952 for federal regulatory fees by the payment deadlines. *See infra* paras. 11-26.

[3] 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A).

[4] 47 U.S.C. § 254(d).

telecommunications revenues.[5] Under section 254(d) of the Act, the Commission also requires certain providers of interstate telecommunications to contribute to the USF.[6]

3. The Commission has established specific procedures to administer the USF. Each service provider required to contribute to the USF is required to file annually an FCC Form 499-A, also known as the Annual Worksheet,[7] and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.[8] The Universal Service Administrative Company (USAC), as the Commission's administrator of the USF, uses the revenue projections submitted in the Quarterly Worksheets to determine and invoice each service provider's monthly universal service contribution amount.[9] The monthly USF contributions that were invoiced based on projected revenues reported in a service provider's Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the service provider's Annual Worksheet.[10] Each service provider's Annual Worksheet for 2017 through 2020 revenues were respectively due by April 1 of 2018 through 2021.[11] The Commission's rules require that service providers report accurate information in the Annual Worksheets.[12] The Commission's rules also explicitly warn service providers that the failure to file timely and accurate Worksheets or submit timely USF payments potentially subjects them to enforcement action.[13]

4. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."[14] To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.[15] The Commission

[5] 47 CFR § 54.706(a)-(b).

[6] *See* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); 47 CFR § 54.706(a).

[7] *See* 47 CFR § 54.711; *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), *forfeiture issued*, Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*). Within 30 days of beginning to provide service, new service providers must register with the Commission by obtaining an FCC registration number (FRN) from CORES and obtaining a Filer ID from USAC's E-File system. *E.g.*, *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1372.

[8] *See* 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

[9] *E.g.*, *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1409.

[10] *See Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001) (*2001 USF Order*); 47 CFR § 54.711.

[11] *2021 Annual Worksheet Instructions*, 35 FCC Rcd at 13693; *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1373; *2019 Annual Worksheet Instructions*, 35 FCC Rcd at 448; *2018 Annual Worksheet Instructions*, *33* FCC Rcd at 1823.

[12] 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: "I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year." *E.g.*, 2020 FCC Form 499-A, Line 605. While the Commission permits revisions to Worksheets in certain circumstances, *see 2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1373-74, that opportunity does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information and belief. *See* 2020 FCC Form 499-A, Line 605.

[13] 47 CFR § 54.713.

[14] 47 U.S.C. § 225(b)(1).

[15] *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, para. 7 (1993).

implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.[16] Such services provide telephone access to a significant number of Americans who without it might not be able to make calls to or receive calls from voice-telephone users.[17] Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, certain service providers[18] must contribute to the TRS Fund based on their end-user revenues.[19] Under the Commission's rules, the TRS Fund administrator, RolkaLoube, LLC (RolkaLoube), uses Annual Worksheet filings to determine each service provider's annual or monthly TRS Fund contribution amounts.[20]

5. Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.[21] Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and numbering portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[22] In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission's rules.[23] Under the Commission's rules, service providers[24] must contribute to the costs of numbering administration and Local Number Portability (LNP) on the basis of their end-user telecommunications revenues.[25] The

[16] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143-45, paras. 5-9 (2000).

[17] *Id.*

[18] Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to 47 CFR § 64.601(b)) and every provider of non-interconnected VoIP service must contribute to the TRS Fund. 47 CFR § 64.604(c)(5)(iii)(A).

[19] *Id*. Under the Commission's rules, service providers must contribute at least $25 per year, and service providers whose annual contributions are less than $1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, service providers are permitted to divide their contributions into 12 equal monthly payments. *Id*. § 64.604(c)(5)(iii)(B).

[20] *Id*. Rolka Loube Saltzer Associates, LLC (RLSA) replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. *See Interstate Telecommunications Relay Service (TRS) Fund Administrator Transition*, Public Notice, 26 FCC Rcd. 8436 (2011). RLSA is now known as RolkaLoube, LLC. *See* https://rolkaloube.com/programs/federal-itrs/ (last visited Mar. 13, 2023).

[21] 47 U.S.C. § 251(e)(1).

[22] *Id.* § 251(e)(2). "Number Portability" means "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." *Id.* § 153(37). The inability of customers to retain their telephone numbers when changing local service providers would hamper the development of local competition. *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd. 11701, 11702, para. 3 (1998), *aff'd*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd. 2578 (2002).

[23] 47 CFR §§ 52.17, 52.32.

[24] All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration and LNP. *See id.* §§ 52.17, 52.32; *see also id.* § 52.5(i)-(j) (stating that, for the purpose of the Commission's Part 52 rules, "telecommunications carrier" includes an interconnected VoIP provider).

[25] *See id.* § 52.17(a) ("Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually . . . such contributions to be no less than twenty-five dollars ($25.[00])."); *id.* § 52.32(a) (service providers that have no intrastate, interstate, or international end-user telecommunications revenues derived from providing telecommunications service in areas a regional database serves must pay $100 contributions for LNP, and if service providers derive intrastate, interstate, or international end-user telecommunications revenues in areas a regional

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NANP administrator's billing and collection agent, Welch LLP (Welch),[26] and the LNP administrator, Telcordia Technologies, Inc. d/b/a iconectiv (iconectiv),[27] respectively use Annual Worksheet filings to determine service providers' required payments for NANP and LNP administration.[28]

6. The Act directs the Commission to "assess and collect regulatory fees to recover the costs of carrying out" the functions of the Commission,[29] including "enforcement activities, policy and rulemaking activities, user information services, and international activities."[30] Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.[31] Service providers[32] must pay regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.[33]

7. Because USAC, RolkeLoube, iconectiv, Welch, and the Commission rely on Worksheets to determine respective payment requirements for administration of the USF, TRS Fund, LNP, NANP, and federal regulatory fees, the accuracy and timeliness of Worksheet filings are vital. The Commission, through USAC, must be able to verify that each service provider is compliant with the Commission's rules, including being able to review documents that support the accuracy of information reported in Worksheets.[34] When a service provider underreports its revenues in its Worksheets, and then exacerbates the problem by not complying with USAC's attempts to verify the reported revenues through supporting documentation, the service provider could prevent administrators from fully invoicing the service provider for its USF, TRS Fund, LNP, NANP, and federal regulatory fee payment obligations.[35] A

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database serves, the service providers must pay a charge that recovers the remaining shared costs of long-term number portability attributable to each service provider on a proportional basis.)

[26] In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. *See* New Release, Fed. Commc'ns Comm'n, Federal Communications Commission Selects Welch & Company, LLP as the Next North American Numbering Plan Billing and Collection Agent (Apr. 12, 2004), https://www.fcc.gov/document/federal-communications-commission-selects-welch-company-llp-next. In 2007, the billing and collection agent changed its name to Welch LLP. *See* https://welchllp.com (last visited Mar. 20, 2023); *see also Welch LLP celebrates 100th anniversary in Ottawa*, OTTAWA BUSINESS JOURNAL (Feb. 8, 2018), https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa.

[27] *See Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, 31 FCC Rcd. 8406, Order (2016) (approving the recommendation of the North American Numbering Council (NANC) that iconectiv serve as the next LNP administrator).

[28] 47 CFR §§ 52.17(b), 52.32(b).

[29] 47 U.S.C. § 159(a); *see also id.* § 156(a).

[30] *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1365.

[31] *See* 47 CFR §§ 1.1152–1.1156, 1.1157(b) (addressing federal regulatory fee requirements for wireless radio, mass media, common carrier, cable television, and international service providers).

[32] *See* https://www.fcc.gov/licensing-databases/fees/regulatory-fees (identifying Commission licensees and other regulated entities that must pay federal regulatory fees) (last visited Mar. 13, 2023).

[33] *See* 47 CFR § 1.1154.

[34] *See id.* § 54.711(a); *see also id*. § 54.706(e).

[35] *See id.* § 54.711(a); *Telseven NAL*, 27 FCC Rcd at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, 31 FCC Rcd at 1636, para. 20 (assessing $1,658,465.00 in forfeitures for USF, LNP, NANP and federal regulatory fee payment violations effectuated by underreporting revenues in Worksheets and $100,000 for underreporting projected revenues in two Quarterly Worksheets); *Telrite Corp*., Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241-42, para. 24 (2008) (proposing $824,212 forfeiture for USF, TRS Fund, LNP, NANP and federal regulatory fee payment violations effectuated by underreporting revenues in Worksheets and $100,000 forfeiture for filing two inaccurate Worksheets, and observing, "Although Telrite made monthly payments to the USF covering the amounts invoiced by USAC, those invoiced amounts were based on Telrite's inaccurate
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contributor's failure to comply with the Worksheet filing and verification functions can impede the very purpose for which Congress enacted section 254(d)—to ensure that every required contributor to the USF "contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[36] The effects on the administration of TRS, LNP, NANP, and on the Commission's assessment of federal regulatory fees are similar. Indeed, a service provider that impedes the Commission and USAC from verifying the revenue information submitted in its Worksheets can evade its federal obligations to contribute fully toward the vital programs linked to the reporting obligations.[37] As a consequence of this evasion, other service providers carry an unfair burden of funding the USF and the other federal regulatory programs arising under the Act.[38] Delinquent service providers obtain an unfair competitive advantage over service providers that comply with the reporting provisions of the Commission's rules, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments required under the Commission's rules.[39]

B. Factual Background

8. The factual background concerning PayG and its conduct that is set forth in the *PayG First NAL* need not be reiterated at length here.[40] PayG began providing interstate telecommunications services in the last quarter of 2011.[41] On February 9, 2021, USAC referred PayG to the FCC's Enforcement Bureau (Bureau) for investigation of PayG's repeated failures to comply with USAC's requests to provide documentation supporting the Company's Annual Worksheet filings.[42] The Bureau sent a Letter of Inquiry (LOI) to PayG on March 16, 2021,[43] and PayG responded on June 14, July 27, and August 3, 2021.[44]

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Worksheets filed with USAC, and Telrite should have been making significantly larger contributions.") (*Telrite NAL*), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

[36] 47 U.S.C. § 254(d).

[37] *See, e.g., PayG First NAL* at *2, para. 3; *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, 2022 FCC LEXIS 1091 at *2-9, paras. 2-5 (EB Apr. 1, 2022) (*Correct Solutions NAL*) (proposed forfeiture paid); *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), *consent decree adopted,* Order, 29 FCC Rcd 2593 (2014).

[38] *See PayG First NAL* at *2, para. 3; *Correct Solutions NAL* at *2-9, paras. 2-5; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12.

[39] *See PayG First NAL*, 2022 at *2, para. 3; *Correct Solutions NAL* at *2-9, paras. 2-5; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12.

[40] *See PayG First NAL* at *11-25, paras. 8-20.

[41] Response to Letter of Inquiry, from Leon Nowalsky, Counsel to PayG d/b/a/ Skyswitch, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1, 6 (June 14, 2021) (on file in EB-IHD-21-00031864) (LOI Response). PayG has the authority to provide resale service pursuant to section 214 of the Act. *See International Authorizations Granted*, Public Notice, 32 FCC Rcd 10423 (2017); *International Authorizations Granted*, Public Notice, 35 FCC Rcd 14174, 14182 (IB 2020).

[42] *See* Letter from Fred Theobald, Director of Contributor Operations, Universal Services Administrative Company, to Pam Slipakoff, Investigations & Hearings Division, FCC Enforcement Bureau, at 3 (July 5, 2022) (on file in EB-IHD-21-00031864) (First USAC Letter).

[43] Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Louie Holmes, Chief Executive Officer, PayG, LLC d/b/a Skyswitch (Mar. 16, 2021) (LOI) (on file in EB-IHD-21-00031864).

[44] *See* LOI Response; Supplement to Responses to Letter of Inquiry, from Leon Nowalsky, Counsel to PayG d/b/a/ Skyswitch, to Pam Slipakoff, Investigation & Hearings Division, FCC Enforcement Bureau (July 27, 2021) (on file in EB-IHD-21-00031864); Supplement to Responses to Letter of Inquiry, from Leon Nowalsky, Counsel to PayG d/b/a/ Skyswitch, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 3, 2021) (on file in
(continued….)

9. On September, 14, 2022, the Commission released the *PayG First NAL*, proposing a penalty of $153,000 for PayG's repeated failures to file accurate Worksheets, to cooperate with Worksheet documentation production requirements, and to maintain current information in CORES.[45] In the *PayG First NAL*, we observed that PayG prevented USAC from verifying the Company's Annual Worksheets for nearly a three-year period, failing to comply with six requests for supporting documentation that were due between June 5, 2019, and November 23, 2020.[46] The Commission also found that PayG repeatedly filed inaccurate Annual Worksheets for 2018 through 2021.[47]

10. As described above, payment requirements for the USF, TRS Fund, LNP, NANP and federal regulatory fees rely on the accuracy of revenues reported in Annual Worksheets.[48] In the *PayG First NAL*, we reserved the right to take further enforcement action against PayG for violations of payment requirements arising under the Act.[49]

1. Failures to Pay or Pay USF Contributions Fully on Time

11. In its original 2018 Annual Worksheet filing on April 26, 2018, and a revision filed on February 20, 2019, PayG reported no revenues for 2017.[50] However, after the Bureau issued the LOI, PayG subsequently filed a revised 2018 Annual Worksheet on June 14, 2021, reporting reseller and end user revenues.[51] On July 19, 2021, PayG submitted another revised 2018 Annual Worksheet, decreasing its reported reseller revenue and increasing its reported end user revenue.[52]

12. PayG also began complying with USAC's documentation requests on July 19, 2021, over two years after USAC first requested supporting documentation.[53] On April 15, 2022, USAC finally obtained all the documentation it needed to verify PayG's Annual Worksheets for 2019 through 2021.[54] Based on PayG's documentation, USAC found that PayG misclassified end user revenues as reseller revenues and thereby underreported its USF contribution base revenues in the Company's Annual Worksheet filings between 2019 and 2021.[55]

13. Pursuant to the Commission's rules, USAC uses Quarterly Worksheet filings, which project a service provider's revenues, to calculate monthly USF invoices, and then USAC uses Annual Worksheet filings, which report actual revenues from the year preceding the Annual Worksheet filing, to

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EB-IHD-21-00031864).

[45] *See PayG First NAL* at *51, para. 44 (citing 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1362). PayG paid the proposed forfeiture on October 4, 2022.

[46] *Id.* at *12-25, paras. 9-20.

[47] *Id.* at *38-39, paras. 31-32.

[48] *See supra* paras. 3-7.

[49] *PayG First NAL* at *25, para. 20 & n.82 ("The Commission reserves the right to take further enforcement action against PayG for any violations of USF payment obligations and other payment obligations arising under the Act.").

[50] *See* Letter from Fred Theobald, Director of Contributor Operations, Universal Services Administrative Company, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau, at 1-2 (May 10, 2023) (on file in EB-IHD-23-00035031) (Second USAC Letter).

[51] *Id.*

[52] *Id.*

[53] *PayG First NAL* at *28, para. 23 (citing First USAC Letter at 10).

[54] *Id.* (citing First USAC Letter at 9).

[55] *Id.* at para. 20 & n.82 (citing First USAC Letter at 9-10 & n.17).

assess true-ups that correct the USF assessments for that year.[56] Thus, if a service provider's revenues reported in an Annual Worksheet exceed revenues projected in Quarterly Worksheets, USAC will invoice additional USF assessments so that the service provider will fully pay the USF assessments required for the year under the Commission's rules and orders.[57] PayG's initial Annual Worksheets for 2018 through 2021, which PayG filed respectively on April 26, 2018, March 26, 2019, March 23, 2020, and April 1, 2021, were inaccurate; the Company underreported its revenues subject to USF assessments.[58] Based on the revenues inaccurately reported by PayG, the Company was subject to the *de minimis* exception for 2017 through 2019 revenues, and USAC could not invoice PayG for true-ups based respectively on the 2018 through 2020 Annual Worksheets when the true-up invoices would have ordinarily been issued.[59] Thus, PayG did not pay true-ups for the Annual Worksheets for 2018 through 2020 when the true-up payments were due.[60] Likewise, because PayG underreported revenues in its 2021 Annual Worksheet, USAC could also not fully invoice, and PayG did not fully pay USF true-up payments based on the 2021 Annual Worksheet when the true-up payments were due.[61]

14. The Company further delayed USAC's ability to invoice or invoice USF true-up assessments fully based on the Annual Worksheets for 2019 through 2021 by repeatedly failing to comply with USAC's documentation requests pursuant to section 54.711(a) of the Commission's rules.[62] After PayG finally provided USAC the documentation USAC needed to verify PayG's reported revenues, USAC found that PayG needed to revise its 2019, 2020, and 2021 Annual Worksheet filings, and move a total of $8,551,594 of reseller revenues from Block 3 to the appropriate lines for end user revenues in Block 4 of the Annual Worksheet filings.[63] PayG has not disputed USAC's findings. As USAC received documentation from PayG to assess the accuracy of PayG's reported revenues, it directed PayG to file revisions to the Annual Worksheets for 2019 through 2021 that were consistent with documented revenues. On April 22, 2022, PayG filed revisions to its Annual Worksheets for 2019 through 2021, and USAC accepted these revised Annual Worksheet filings.[64]

15. USAC determined that by underreporting its net universal service contribution base revenues in its Annual Worksheets for 2018 through 2021, PayG underpaid its 2017 USF contributions by $16,200.72, 2018 USF contributions by $61,240.71, 2019 USF contributions by $103,042.17, and 2020

[56] *See 2001 USF Order*, 16 FCC Rcd at 5752-53, para. 12; 47 CFR § 54.711.

[57] *See 2001 USF Order*, 16 FCC Rcd at 5752-53, para. 12. Conversely, if a service provider's revenues reported in an Annual Worksheet are lower than revenues projected in Quarterly Worksheets, USAC will issue credits so that the service provider will not pay more than the USF assessments required for the year. *See id.*

[58] Second USAC Letter at 2. In its LOI Response, PayG acknowledged that it incorrectly reported end user revenues as reseller revenues and therefore, on June 14, 2021, PayG filed revisions to its 2017 through 2021 Annual Worksheets purportedly to correct the inaccuracies. *See* PayG's LOI Response at 9, Response to Question 16. PayG also admitted that "from January 1, 2018, through [June 14, 2021], USAC did not invoice PayG for USF due to inaccurate information listed on its 499-As and 499-Qs [*i.e.*, Annual and Quarterly Worksheets]." LOI Response at 14, Response to Question 18. USAC determined that PayG's revised Annual Worksheet filings that USAC received on June 14, 2021, were still inaccurate, and the Company continued to underreport its revenues subject to USF assessments. *See* First USAC Letter at 4-10; Second USAC Letter at 3-4.

[59] Second USAC Letter at 2. Under the *de minimis* exemption, if a service provider's contribution to the USF in any given year would be less than $10,000, the service provider is not required to pay USF contributions. *See* 47 CFR § 54.708.

[60] Second USAC Letter at 2.

[61] *Id*.

[62] *See PayG First NAL* at *13-25, paras. 10-20; Second USAC Letter at 2.

[63] *See PayG First NAL* at *25, para. 20 & n.82.

[64] Second USAC Letter at 3.

USF contributions by $158,218.04.[65] PayG therefore underpaid USF contributions for 2017 through 2020 by a total of $338,701.64. As USAC received revenues documentation and Annual Worksheet revisions for 2018 through 2021 from PayG, USAC issued USF true-up invoices to the Company. USAC invoiced true-ups based on revised Annual Worksheets for 2018 through 2021 on July 15, August 13, September 15, 2021, and true-ups based on the Annual Worksheets for 2020 and 2021 on October 15, November 15, and December 15, 2021.[66] On May 13, 2022, USAC finally had all the documentation it needed to verify the revenues reported in PayG's Annual Worksheets and was able to invoice the last of the true-ups for PayG's revised Annual Worksheets for 2018 through 2021.[67] PayG paid the May 13, 2022, invoice on June 2, 2022.[68]

16. If PayG had filed accurate Annual Worksheets by the April 1 filing deadlines of 2018 through 2021, USAC would have been able to invoice or invoice USF true-up assessments fully the following July, August, and September, which is USAC's customary true-up process under the Commission's rules and orders.[69] PayG's USF true-up payments would have been due as follows: (1) $5,400.24 each on August 15, September 14, and October 15, 2018 ($16,200.72 total for 2018 Annual Worksheet true-ups); (2) $20,413.57 each on August 15, September 13, and October 15, 2019 ($61,240.71 total for 2019 Annual Worksheet true-ups); (3) $34,347.39 each on August 14, September 15, and October 15, 2020 ($103,042.17 total for 2020 Annual Worksheet true-ups); and (4) $52,739.34 or $52,739.35 each on August 13, September 15, and October 15, 2021 ($158,218.04 total for 2021 Annual Worksheet true-ups).[70] However, PayG did not fully pay the USF true-up assessments until June 2, 2022, when it made a payment of $144,265.46.[71] In applying the American Rule of accounting,[72] the Company's June 2, 2022, payment satisfied USF payments that were due by the following dates: (1) October 15, 2021;[73] (2) November 15, 2021; (3) December 15, 2021; (4) January 14, 2022; (5) February

[65] *Id.*

[66] *Id.*

[67] *Id.* USAC invoiced true-up adjustments for the 2018 revised Annual Worksheet totaling $16,200.72, as follows: $5,145.13 (July 15, 2021); $5,145.14 (Aug. 13, 2021); $5,145.15 (Sept. 15, 2021); and $765.30 (May 13, 2022). USAC invoiced true-up adjustments for the 2019 revised Annual Worksheet totaling $61,240.71, as follows: three assessments of $11,062.61 (July 15, Aug. 13, and Sept. 15, 2021); and $28,052.88 (May 13, 2022). USAC invoiced true-up adjustments for the 2020 revised Annual Worksheet totaling $103,042.17, as follows: two assessments of $19,801.81 (Oct. 15, and Nov. 15, 2021); $19,801.82 (Dec. 15, 2021); and $43,636.73 (May 13, 2022). USAC invoiced true-up adjustments for the 2021 revised Annual Worksheet totaling $158,218.04, as follows: two assessments of $32,604.64 (July 15, and Aug. 13, 2021); $32,604.63 (Sept. 15, 2021); two assessments of $572.65 (Oct. 15, and Nov. 15, 2021); $572.64 (Dec. 15, 2021); and $58,686.19 (May 13, 2022). *Id.*

[68] *Id.*

[69] *Id.* at 3-4. *See 2001 USF Order*, 16 FCC Rcd at 5752-53, para. 12; 47 CFR § 54.711.

[70] Second USAC Letter at 3-4. USF payments are due on the 15th of each month, but if the 15th falls on a weekend or holiday, payments are due on the preceding business day. *Id.* at 3 & n.9. The $158,218.04 total for the 2021 Annual Worksheet USF contribution true-ups, divided by three is $52,739.35 per month, rounded to the nearest cent.

[71] *Id.* at 3 & Attachment 1 – Account History.

[72] *See* 47 CFR § 54.713(e). ("If a universal service fund contributor pays the Administrator a sum that is less than the amount due for the contributor's universal service contribution, the Administrator shall adhere to the 'American Rule' . . . . In applying the payment to outstanding principal, the Administrator shall apply such payment to the contributor's oldest past due amounts first.")

[73] Under the American Rule of accounting, the USF payment due on October 15, 2021, was also partially paid through application of PayG's December 2021 through May 2022 monthly payments. *See* USAC Second Letter, Attachment – Account History.

15, 2022; (7) March 15, 2022; and (8) April 15, 2022.[74] The June 2, 2022 payment also timely paid the USF payment due on June 15, 2022.[75]

2. Failures to Pay or Pay TRS Fund Contributions Fully on Time

17. The TRS Fund administrator, RolkaLoube, informed Bureau staff that USAC provided PayG's original 2018 Annual Worksheet filing to RolkaLoube on April 26, 2018, and based on PayG's inaccurately reported revenues at that time, no TRS Fund payment was due.[76] If PayG had fully reported its revenues, RolkaLoube would have issued PayG 12 monthly TRS Fund invoices between July 20, 2018, and June 21, 2019, totaling $2,963.57.[77] The 12 TRS Fund payments of $246.96 or $246.97 would have been due between August 17, 2018, and July 19, 2019.[78] PayG did not fully pay these TRS Fund obligations until July 6, 2022.[79]

18. USAC provided PayG's original 2019 Annual Worksheet filing to RolkaLoube on May 22, 2019, and based on PayG's inaccurately reported revenues at that time, no TRS Fund payment was due.[80] If PayG had fully reported its revenues, RolkaLoube would have issued PayG 12 monthly TRS Fund invoices between July 19, 2019, and June 21, 2020, totaling $10,284.30.[81] The 12 monthly TRS Fund payments of $857.02 or $857.03 would have been due between August 16, 2019, and July 19, 2020.[82] PayG did not fully pay these TRS Fund obligations until July 6, 2022.[83]

19. USAC provided PayG's original 2020 Annual Worksheet filing to RolkaLoube on June 6, 2020, and based on PayG's inaccurately reported revenues at that time, no TRS Fund payment was

[74] *See id.*

[75] *See id.*

[76] E-mail from Theresa Conway, Senior Program Analyst, RolkaLoube, LLC, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau, at 5 (Oct. 7, 2022, 10:05 EDT) (on file in EB-IHD-23-00035031) (RolkaLoube E-mail).

[77] If a contributor opts to pay TRS Fund contributions greater than $1,200 over 12 months, rather than in one payment, RolkaLoube issues TRS Fund invoices to contributors in three groupings and issues invoices to PayG's grouping the third or fourth Friday of each month. *Id.* at 3-4. USAC provided RolkaLoube a revised 2018 Annual Worksheet for PayG on June 18, 2021, and based on the revenues in this revised filing, PayG owed $2,2823.58 for TRS Fund assessments due between August 2018 and July 2019. RolkaLoube invoiced PayG $2,2823.58 on July 23, 2021, which was due on August 22, 2021, and PayG paid on August 13, 2021. USAC provided RolkaLoube the final 2018 Annual Worksheet revision in May 2022, and the revised amount due for the TRS Fund was $2,963.57, an additional $139.99, which RolkaLoube invoiced on June 17, 2022, was due on July 17, 2022, and PayG paid on July 6, 2022. *Id*. at 5.

[78] Payment deadlines for TRS Fund invoices issued between July 2018 and June 2019 were 28 days after RolkaLoube issued the invoices. *Id*. at 2. The $2,963.57 total for the 12-month period, due between August 2018 and July 2019, divided by 12 is $246.96 per month, rounded to the nearest cent. Beginning in July 2020, payment due dates for TRS Fund monthly invoices were changed to 30 days after RolkaLoube issued the invoices. *Id*.

[79] *Id.* at 5.

[80] *Id*.

[81] *Id*. USAC also provided RolkaLoube a revised 2019 Annual Worksheet on June 18, 2021, and based on the revenues in this revised filing, PayG owed $5,573.31 for TRS Fund assessments due between August 2019 and July 2020. RolkaLoube invoiced PayG $5,573.31 on July 23, 2021, which was due on August 22, 2021, and PayG paid on August 13, 2021. USAC provided RolkaLoube a final 2019 Annual Worksheet revision for PayG in May 2022 and the revised amount due was $10,284.30, an additional $4,710.99, which RolkaLoube invoiced on June 17, 2022, was due on July 17, 2022, and PayG paid on July 6, 2022. *Id.*

[82] RolkaLoube E-mail at 2. The $10,284.30 total for the 12-month period, due between August 2019 to July 2020, divided by 12 is $857.03 per month, rounded to the nearest cent.

[83] *Id.* at 5.

due.[84] If PayG had fully reported its revenues, RolkaLoube would have issued 12 monthly TRS Fund invoices between July 24, 2020, and June 18, 2021, totaling $32,562.48.[85] The 12 monthly TRS Fund payments of $2,713.54 would have been due between August 23, 2020, and July 18, 2021.[86] PayG did not fully pay these TRS Fund obligations until July 6, 2022.[87]

20. USAC provided RolkaLoube the original 2021 Annual Worksheet filing from PayG on June 18, 2021, and based on PayG's inaccurately reported revenues at that time, RolkaLoube determined that PayG owed $26,020.08 to the TRS Fund for the August 2021 to July 2022 period.[88] If PayG had fully reported its revenues, RolkaLoube would have issued 12 monthly TRS Fund invoices between July 16, 2021, and June 17, 2022, totaling $43,506.96.[89] The 12 monthly TRS Fund payments of $3,625.58 would have been due between August 15, 2021, and July 17, 2022.[90] PayG did not fully pay its TRS Fund obligations due between August 15, 2021, and June 19, 2022, until July 6, 2022.[91] For this 11-month period, PayG should have paid $39,881.38 ($3,625.58 x 11 months), but the Company only paid $24,309.23, and therefore PayG underpaid contributions owed between August 15, 2021, and June 19, 2022, by $15,572.15 ($39,881.38 - $24,309.23).[92]

21. In sum, based on verified revenues in the Company's Annual Worksheets for 2018 through 2021 accepted by USAC, PayG underpaid the TRS Fund as follows: $2,963.57 (2018 Annual Worksheet); $10,284.30 (2019 Annual Worksheet); $32,562.48 (2020 Annual Worksheet); and $15,572.15 (2021 Annual Worksheet). PayG's TRS Fund underpayments for the Annual Worksheets

[84] *Id.*

[85] *Id*. USAC also provided RolkaLoube a revised 2020 Annual Worksheet for PayG on July 20, 2021, and based on the revenues in this revised filing, PayG owed $18,273.12 for TRS Fund assessments due between August 2020 and July 2021. RolkaLoube invoiced PayG $18,273.12 on August 20, 2021, which was due on September 19, 2021, and PayG paid on September 8, 2021. USAC provided Rolka a final 2020 Annual Worksheet revision in May of 2022, and the revised amount due for the TRS Fund was $32,562.48, an additional $14,289.36, which RolkaLoube invoiced on June 17, 2022, was due on July 17, 2022, and PayG paid on July 6, 2022. *Id*.

[86] *Id*. at 2.

[87] *Id.* at 5.

[88] RolkaLoube E-mail.

[89] *Id*. Based on the June 18, 2021, version of the 2021 Annual Worksheet, on July 23, 2021, RolkaLoube invoiced PayG a monthly installment of $2,168.34, which was due on August 22, 2021. USAC provided RolkaLoube a revised 2021 Annual Worksheet on July 20, 2021, and based on the reported revenues in that filing, the amount due for TRS Fund assessments was $26,519.16. On August 20, 2021, RolkaLoube credited back to PayG the July 23, 2021, $2,168.34 installment assessment, and billed PayG two of twelve TRS Fund monthly assessments totaling $4,419.86 ($2,209.93 each), which RolkaLoube invoiced on August 20, 2021, were due September 19, 2021, and PayG paid on September 8, 2021. Between September of 2021 and May of 2022, RolkaLoube invoiced nine monthly TRS Fund assessments of $2,209.93, which PayG paid. USAC provided RolkaLoube a final 2021 Annual Worksheet revision on May 16, 2022, which changed the amount due for TRS Fund assessments to $43,506.96 (an additional $16,987.80 above the $26,519.16 assessment based on the July 20, 2021, version of the revised 2021 Annual Worksheet). On June 17, 2022, RolkaLoube credited back to PayG $24,309.23 that was billed and paid based on the July 20, 2021, version of the Annual Worksheet filing (11 x $2,209.93 monthly installment assessments). RolkaLoube also invoiced PayG for $43,506.96, based on the final, May 16, 2022, version of the 2021 Annual Worksheet. RolkaLoube applied the $24,309.23 credit to the final assessment, and a $19,197.73 balance was due on July 17, 2022, which PayG paid on July 6, 2022. *Id*.

[90] *Id.* at 2.

[91] *Id.* at 5. PayG timely paid its TRS Fund obligation due in July 2022 with its July 6, 2022, payment. *Id.*

[92] *Id*. at 5.

from 2018 through 2021 totaled $61,382.50.[93] PayG did not dispute these underpayment amounts. Monthly payments were due for each August to July period following each Annual Worksheet filing deadline of April 1 of 2018 through 2021. PayG's delinquency for TRS Fund obligations began on August 17, 2018.[94] PayG did not fully pay TRS Fund assessments based on verified revenues in the Company's Annual Worksheet revisions for 2018 through 2021 until July 6, 2022, almost four years after payments were first due.

3. Failures to Pay NANP Administration Assessments Fully on Time

22. The NANP administrator's billing agent, Welch, informed Bureau staff that based on the inaccurate revenues reported in PayG's original 2019 Annual Worksheet filing, Welch invoiced PayG a $25 assessment for NANP administration.[95] Based on the verified revenues reported in the 2019 Annual Worksheet accepted by USAC, PayG underpaid the assessment for NANP administration by $134.33.[96] PayG's NANP obligation based on the 2019 Annual Worksheet was due by October 15, 2019, but PayG did not fully pay this assessment until July 11, 2022.[97]

23. Based on the inaccurate revenues reported in PayG's original 2020 Annual Worksheet filing, Welch invoiced PayG a $25 assessment for NANP administration.[98] Based on the verified revenues reported in the 2020 Annual Worksheet accepted by USAC, PayG underpaid the assessment for NANP administration by $160.22.[99] PayG's NANP obligation based on the 2020 Annual Worksheet was due October 13, 2020, but PayG did not fully pay this assessment until July 11, 2022.[100]

24. Based on the inaccurate revenues reported in PayG's original 2021 Annual Worksheet filing, Welch invoiced PayG a $130.39 assessment for NANP administration.[101] Based on the verified revenues reported in the 2021 Annual Worksheet accepted by USAC, PayG underpaid the assessment for NANP administration by $85.59.[102] PayG's NANP obligation based on the 2021 Annual Worksheet was due October 12, 2021, but PayG did not pay the $85.59 assessment until July 11, 2022.[103]

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[93] PayG admitted that from January 1, 2018, through June 14, 2021, RolkaLoube did not invoice PayG for TRS Fund assessments "due to inaccurate information listed on its 499-As and 499-Qs [*i.e.*, Annual and Quarterly Worksheets]." LOI Response at 15, Response to Question 20.

[94] RolkaLoube E-mail at 2.

[95] E-mail from Heather Bambrough, Principal, Welch, LLP, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Sept. 21, 2022, 8:06 EDT) (on file in EB-IHD-23-00035031) (Welch E-mail). Based on PayG's original 2018 Annual Worksheet filing, Welch invoiced PayG a $25 assessment for NANP administration, and PayG's assessment for NANP administration did not change based on the revised 2018 Annual Worksheet verified and accepted by USAC. *See id.*

[96] *Id.*

[97] *Id*. Based on PayG's revised 2019 Annual Worksheet filings, Welch issued true-up invoices of (1) $64.19, which PayG paid on December 15, 2021, and (2) $80.14, which PayG paid on July 11, 2022. *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id*. Based on PayG's revised 2020 Annual Worksheet filings, Welch issued true-up invoices for (1) $78.15, which PayG paid on December 15, 2021, and (2) 82.07, which PayG paid on July 11, 2022. *Id.*

[101] Welch E-mail.

[102] *Id.*

[103] *Id*.

25. In sum, PayG underpaid assessments for NANP administration by a total of $380.14 for assessments based on the Company's Annual Worksheets for 2019 through 2021.[104] Payments of $134.33, $160.22, and $85.59 were respectively due on October 15, 2019, October 13, 2020, and October 12, 2021. PayG's NANP administration payment delinquency therefore began on October 15, 2019, and PayG did not fully meet its NANP administration obligations until July 11, 2022.

4. Failures to Pay or Pay Federal Regulatory Fees Fully on Time

26. Based on the inaccurate revenues reported in PayG's 2019 through 2021 Annual Worksheet filings, the Company did not pay or did not fully pay its 2019 through 2021 federal regulatory fees by the payment deadlines.[105] After USAC provided Commission staff PayG's verified revenues in the revised Annual Worksheet filings accepted by USAC, on October 1, 2022, Commission staff issued three invoices to collect PayG's unpaid 2019 and 2020 federal regulatory fees, and an underpayment for 2021 federal regulatory fees.[106] PayG owed $1,173 and $1,669 respectively for 2019 and 2020 federal regulatory fees, and PayG underpaid 2021 federal regulatory fees by $1,110, a total delinquency of $3,952.[107] PayG's federal regulatory fee payments for 2019 through 2021 were respectively due in full by September 27, 2019, September 28, 2020, and September 27, 2021.[108] PayG did not pay or fully pay its federal regulatory fees for 2019 through 2021 until December 5, 2022.[109]

III. DISCUSSION

A. PayG Failed to Pay or Pay USF Contributions Fully When Due

27. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by willfully and repeatedly failing to pay or pay its USF contributions fully on time.[110] PayG's USF true-up contributions based on accurate Annual Worksheets for 2018 through 2021 were due respectively in August, September, and October of 2018 through 2021.[111] PayG either did not pay or underpaid its USF

[104] PayG admitted that from January 1, 2018, through June 14, 2021, Welch did not fully invoice PayG for NANP administration assessments due to inaccurate information listed on its Annual and Quarterly Worksheets. *See* LOI Response at 17, Response to Question 24 (acknowledging that PayG would need to pay additional assessments).

[105] *See* E-mail from Roland Helvajian, Program Analyst, Financial Operations, FCC Office of Managing Director, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Dec. 15, 2022, 11:28 EDT) (on file in EB-IHD-23-00035031) (OMD December 15, 2022, E-mail).

[106] Based on inaccurate revenue data from PayG's 2019 through 2021 Annual Worksheets, the Commission's Fee Filer System indicated that PayG did not owe 2019 or 2020 federal regulatory fees, and apparently indicated that PayG owed only $1,883 for 2021 federal regulatory fees. *See* LOI Response at Exhibit 54; OMD December 15, 2022, E-mail at 4-5 (indicating that PayG paid only $1,883 for federal regulatory fees on September 14, 2021, when the Company should have paid $2,993 by September 27, 2021).

[107] *See id.* at 6-7. PayG admitted that it did not pay 2019-20 federal regulatory fees by the payment deadlines and would need to pay regulatory fee assessments based on revised Annual Worksheet filings. LOI Response at 18, Response to Question 26; 37, Response to Question 54.

[108] *Regulatory Fee Filing Window is Extended to Monday, September 27, 2021*, Public Notice, 36 FCC Rcd 13907 (OMD Sept. 24, 2021) (*2021 Reg Fees Public Notice*); *Regulatory Fee Filing Window is Extended to Monday, September 28, 2020*, Public Notice, 35 FCC Rcd 10466 (OMD Sept. 24, 2020) (*2020 Reg Fees Public Notice*); *Regulatory Fee Filing Window is Extended to Friday, September 27, 2019*, Public Notice, 34 FCC Rcd 8590 (OMD 2019) (*2019 Reg Fees Public Notice*).

[109] OMD December 15, 2022, E-mail at 1.

[110] 47 U.S.C. § 254(d); 47 CFR § 54.706(a).

[111] Second USAC Letter at 3-4.

true-up contributions when due for the Annual Worksheets for 2018 through 2021 by a total of $338,701.64.[112]

28. According to PayG's inaccurately reported revenues in its Annual Worksheets for 2018 through 2020, the Company was subject to the *de minimis* exemption under section 54.708 of the Commission's rules.[113] PayG's repeated failures to report revenues fully in its Annual Worksheet filings and repeated failures to comply with documentation production requirements prevented USAC from invoicing PayG for any USF contributions between July 15, 2018, and March 15, 2021. PayG also prevented USAC from fully invoicing the Company for USF contributions between April 15, 2021, and April 15, 2022.[114] As the Commission has repeatedly observed, service providers must fully pay their contributions to the USF in a timely manner.[115] The Act and the Commission's rules do not require an invoice from the administrator to establish a payment obligation for the USF.[116] A service provider that does not file a required Worksheet might not receive an invoice from USAC, but it is still required to contribute to the USF by required payment deadlines (unless its accurately reported revenues are considered *de minimis*).[117] Likewise, if a service provider underreports its revenues in its Worksheets, and as a result USAC invoices less than the full USF payment required under the Commission's rules, the service provider is nonetheless required to fully contribute by the payment deadlines.[118]

29. Failures to pay USF contributions fully and on time are continuing violations, which begin the day a service provider does not fully pay an owed contribution by the payment deadline, and continue until the service provider has fully paid the amount owed.[119] The Act and the Commission's rules issued pursuant to the Act establish that the requirement to pay USF contributions imposes a continuing obligation to pay after a service provider did not make required contributions by payment deadlines.[120] We consider PayG's failures to pay monthly USF assessments on time to be continuing

[112] *Id.* at 3.

[113] 47 CFR § 54.708.

[114] USAC did not receive all the supporting documentation that USAC needed to verify PayG's revenues until USAC issued the May 13, 2022, invoice. Second USAC Letter at 3.

[115] *See, e.g.*, 47 CFR §§ 54.706, 54.713; *Telseven NAL*, 27 FCC Rcd at 6638-39, para 6.; *Kajeet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16686-87, para. 6 (2011) (*Kajeet NAL*), *consent decree adopted*, Order, 30 FCC Rcd 10608 (2015); *NTS Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137, 5139, para. 4 (2010) (*NTS NAL*), *consent decree adopted*, Order, 28 FCC Rcd 16515 (2013).

[116] *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26 (citing 47 U.S.C. § 254(d); 47 CFR § 54.706(b)); *Kajeet NAL*, 26 FCC Rcd at 16686 n.22; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 n.12.

[117] *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *Kajeet NAL*, 26 FCC Rcd at 16686 & n.22; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

[118] *See* 47 U.S.C. § 254(d) (service providers "shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."); 47 CFR 54.706(a) (service providers "must contribute to the universal service support mechanisms."); *Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15; *Telrite NAL*, 23 FCC Rcd at 7238-39, paras. 14-15.

[119] *E.g.*, *Telseven NAL*, 27 FCC Rcd at 6644, para. 15, 6647, para. 23; *Telrite NAL*, 23 FCC Rcd at 7243, para. 27. USF assessments that have been delinquent for more than 90 days can be transferred to the United States Department of the Treasury (Treasury Department) for collection under the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (DCIA), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B. *See* 47 CFR § 1.1917; https://www.usac.org/service-providers/making-payments/late-payments-dcia-red-light/ (last visited Mar. 13, 2023). A service provider remains obligated to pay fully all unpaid assessments whether an administrator or a collection agent is collecting USF, TRS, LNP, NANP or federal regulatory fee debt, and thus in either case, the payment violation continues until the debt is fully paid.

[120] The Act and the Commission's rules establish that the obligation to pay USF contributions does not end until the contributor fully pays all assessments required under the Commission's rules. *See* 47 U.S.C. § 254(d) (service

(continued….)

violations that began on August 15, 2018, when the first of three true-up payments was due based on a 2018 Annual Worksheet filing that complied with the Commission's rules.[121] Within the last 12 months, PayG failed to pay eight monthly USF payments on time.[122] These USF payment violations continued until June 2, 2022, the date that the Company fully paid its past due USF true-up contributions based on the revised Annual Worksheet filings for 2018 through 2021 that USAC verified and approved.[123]

B. PayG Failed to Pay or Pay TRS Fund Contributions Fully When Due

30. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully and repeatedly failing to pay or pay its TRS Fund contributions fully on time.[124] PayG's monthly TRS Fund contributions based on accurate Annual Worksheets for 2018 through 2021 were due respectively in each August to July period following the April 1 filing deadlines for the Company's Annual Worksheets for 2018 through 2021.[125] PayG either did not pay or underpaid its TRS Fund contributions when due for the Annual Worksheets for 2018 through 2021 by a total of $61,382.50.[126]

31. PayG's repeated failures to fully report revenues in its Annual Worksheet filings and repeated failures to comply with documentation production requirements prevented RolkaLoube from invoicing PayG for TRS Fund contributions between July 2018 and June 2021. PayG also prevented RolkaLoube from fully invoicing the Company for TRS Fund contributions between July 2021 and May 2022.[127] Service providers must fully pay their contributions to the TRS Fund in a timely manner.[128] The Commission's rules do not require an invoice from the administrator to establish a payment obligation for the TRS Fund.[129] Moreover, if a service provider underreports its revenues in its Worksheets, and as a

(Continued from previous page)
providers "*shall contribute*, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.") (emphasis added); 47 CFR § 713(b) (providing that in addition to having a continuing obligation to pay delinquent USF payments, a USF contributor is also obligated to pay interest, penalties and other charges "*until all charges and costs are paid in full*") (emphasis added); *id.* at § 54.706(a) (service providers "*must contribute* to the universal service support mechanisms.") (emphasis added).

[121] Second USAC Letter at 3-4.

[122] As addressed above, under the American Rule of accounting, the Company failed to pay on time USF contributions that were due on (1) October 15, 2021; (2) November 15, 2021; (3) December 15, 2021; (4) January 14, 2022; (5) February 15, 2022; (7) March 15, 2022; and (8) April 15, 2022. *See* Second USAC Letter, Attachment – Account History.

[123] *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6644, para. 15, 6647, para. 23 ("Telseven's violations for unpaid USF contributions continued with each subsequent day on which it failed to make full payment . . . the Commission has treated failures to pay universal service and other obligations as continuing violations.").

[124] 47 CFR § 64.604(c)(5)(iii)(A).

[125] RolkaLoube E-mail at 2, 5.

[126] *Id.*

[127] RolkaLoube finally had all the revenue information it needed to invoice PayG fully on June 17, 2022, and PayG timely paid its TRS Fund obligation due in July 2022. *Id.*

[128] *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Kajeet NAL*, 26 FCC Rcd at 16686-87, para. 6; *NTS*, 25 FCC Rcd at 5139, para. 4.

[129] *See, e.g.*, 47 CFR § 64.604(c)(5)(iii)(A); *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *ADMA Telecom, Inc*., Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 839-40, para. 3 & n.13 (2009) (*ADMA NAL*), *forfeiture assessed*, Forfeiture Order, 26 FCC Rcd 4152 (2011); *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

result RolkaLoube invoices less than the full TRS Fund payment required under the Commission's rules, the service provider is nonetheless required to fully contribute by the payment deadlines.[130]

32. Failures to pay TRS Fund contributions fully and on time are continuing violations, which begin the day a service provider does not fully pay an owed contribution by the payment deadline, and continue until the service provider has fully paid the amount owed.[131] The Commission's rules issued pursuant to the Act establish that the requirement to pay TRS Fund contributions imposes a continuing obligation to pay after a service provider did not make required contributions by payment deadlines.[132] We consider PayG's failures to pay or pay fully its TRS Fund contributions on time to be continuing violations that began on August 17, 2018, when the first monthly TRS Fund assessment was due based on a 2018 Annual Worksheet filing that complied with the Commission's rules.[133] PayG's TRS Fund payment violations continued until July 6, 2022, the date that the Company fully paid its TRS Fund contributions based on the revised Annual Worksheet filings for 2018 through 2021 that USAC verified and approved.[134]

C. PayG Failed to Pay NANP Administration Obligations Fully When Due

33. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated section 52.17 of the Commission's rules by willfully and repeatedly failing to pay its NANP administration payment obligations fully on time.[135] PayG's NANP administration assessments based on accurate Annual Worksheets for 2019 through 2021 were due respectively on October 15, 2019, October 13, 2020, and October 12, 2021.[136] PayG underpaid its NANP administration assessments when due for the Company's Annual Worksheets for 2019 through 2021 by a total of $380.14.[137]

34. PayG's repeated failures to report revenues fully in its Annual Worksheet filings and repeated failures to comply with documentation production requirements prevented Welch from fully invoicing the Company for NANP administration assessments due between October 15, 2019, and October 12, 2021.[138] Service providers must fully pay their assessments for NANP administration in a

[130] 47 CFR § 64.604(c)(5)(iii)(A) (service providers "shall contribute to the TRS Fund" as prescribed by the Commission's rules); *Telrite NAL*, 23 FCC Rcd at 7240, para. 19; *see also Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15.

[131] *See, e.g.*, *Telrite NAL*, 23 FCC Rcd at 7243, para. 27, 7244-45, para. 32; *ADMA NAL*, 24 FCC Rcd at 854, para. 33.

[132] The Commission's rules establish that the requirement to pay TRS Fund contributions does not end until the contributor pays fully all assessments required under the Commission's rules. *See* 47 CFR § 64.604(c)(5)(iii)(A) (service providers "*shall* contribute to the TRS Fund") (emphasis added), *id.* § 64.604(c)(5)(iii)(B) ("Each subject contributor that has revenues subject to contribution *must* contribute at least $25 per year. [If] annual contributions total less than $1,200 [the contributor] *must* pay the entire contribution at the beginning of the contribution period [and if] contributions total $1,200 or more [the contributor] may divide their contributions into equal monthly payments.") (emphasis added).

[133] RolkaLoube E-mail at 5.

[134] *Telrite NAL*, 23 FCC Rcd at 7243, para. 27 ("nonpayment of USF, TRS, and other contributions constitute continuing violations").

[135] 47 CFR § 52.17.

[136] Welch E-mail at 1.

[137] *Id.*

[138] *Id.*

timely manner.[139] The Commission's rules do not require an invoice from the administrator to establish a payment obligation for NANP administration.[140] Moreover, if a service provider underreports its revenues in its Worksheets, and as a result Welch invoices less than the full NANP administration payment required under the Commission's rules, the service provider is nonetheless required to contribute fully by the payment deadlines.[141]

35. Failures to pay NANP administration assessments fully and on time are continuing violations, which begin the day a service provider does not fully pay an owed assessment by the payment deadline, and continue until the service provider has fully paid the amount owed.[142] The Act and the Commission's rules issued pursuant to the Act establish that the requirement to pay NANP administration assessments imposes a continuing obligation to pay after a service provider did not make required payments by the deadlines.[143] We consider PayG's failures to pay NANP administration assessments fully when due to be continuing violations that began on October 15, 2019, when the NANP administration assessment was due based on a 2019 Annual Worksheet filing that complied with the Commission's rules.[144] PayG's NANP payment violations continued until July 11, 2022, the date that the Company fully paid its NANP administration assessments based on the revised Annual Worksheet filings for 2019 through 2021 that USAC verified and approved.[145]

D. PayG Failed to Pay or Pay Federal Regulatory Fees Fully When Due

36. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated sections 1.1154 and 1.1157 of the Commission's rules by willfully and repeatedly failing to pay or pay fully its federal regulatory fees for 2019 through 2021 on time.[146] PayG's regulatory fee payments based on accurate Annual Worksheets for 2019 through 2021 were due respectively on September 27, 2019, September 28, 2020, and September 27, 2021.[147] PayG either did not pay or underpaid federal regulatory fees when due by a total of $3,952.[148]

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[139] *See, e.g.*, 47 CFR § 52.17; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Kajeet NAL*, 26 FCC Rcd at 16686-87, para. 6; *NTS NAL*, 25 FCC Rcd at 5139, para. 4.

[140] *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

[141] *See Telrite NAL*, 23 FCC Rcd at 7240, para. 20; *See also Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15.

[142] *See Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 RCC Rcd 6125, 6140, para. 33 (2008) (*Compass Global NAL*), *consent decree adopted*, Order, 26 9287 (2011).

[143] The Act and the Commission's rules establish that the requirement to pay NANP administration assessments does not end until the contributor fully pays all assessments required under the Commission's rules. *See* 47 U.S.C. § 251(e)(2) ("The cost of establishing telecommunications numbering administration arrangements and number portability *shall* be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission") (emphasis added); 47 CFR § 52.17 ("All telecommunications carriers in the United States *shall* contribute on a competitively neutral basis . . . . Contributions to support numbering administration *shall* be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually by the [Commission] . . . . Carriers that have no end-user telecommunications revenues *shall* contribute twenty-five dollars") (emphasis added).

[144] Welch E-mail at 1.

[145] *See Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global NAL*, 23 FCC Rcd at 6140, para. 33.

[146] 47 CFR §§ 1154, 1157.

[147] *2021 Reg Fees Public Notice*, 36 FCC Rcd 13907; *2020 Reg Fees Public Notice*, 35 FCC Rcd 10466; *2019 Reg Fees Public Notice*, 34 FCC Rcd 8590.

[148] OMD December 15, 2022, E-mail at 6-7.

37. PayG's repeated failures to report revenues fully in its Annual Worksheet filings for 2019 through 2021 and repeated failures to comply with documentation production requirements prevented the Commission's Fee Filer System from invoicing the Company for 2019 and 2020 federal regulatory fees.[149] It also prevented the Commission from fully invoicing the Company for 2021 federal regulatory fees. Service providers must fully pay federal regulatory fees on time.[150] The Commission's rules do not require an invoice to establish a payment obligation for federal regulatory fees.[151] Moreover, if a service provider underreports its revenues in its Worksheets, and as a result the Commission invoices less than full federal regulatory fees required under the Commission's rules, the service provider is nonetheless required to pay fully the fees by the payment deadlines.[152]

38. Failures to pay federal regulatory fees fully and on time are continuing violations, which begin the day a service provider does not pay owed fees in full by the payment deadline, and continue until the service provider has fully paid the amount owed.[153] The Commission's rules issued pursuant to the Act establish that the requirement to pay federal regulatory fees imposes a continuing obligation to pay after a service provider did not make required payments by the deadlines.[154] We consider PayG's failures to pay or pay fully its federal regulatory fees on time to be continuing violations that began on September 27, 2019, when 2019 federal regulatory fees were due based on a 2019 Annual Worksheet filing that complied with the Commission's rules.[155] PayG's federal regulatory fee payment violations continued until December 5, 2022, the date that the Company fully paid its federal regulatory fees based on the Company's revised Annual Worksheet filings for 2019 through 2021 that USAC verified and approved.[156]

IV. PROPOSED FORFEITURE

39. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]"[157] Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against PayG of up to $237,268 for each violation or each day of a continuing violation, up to a statutory maximum of $2,372,677 for a single act or failure to act.[158] In exercising our

[149] In December 2021, the Commission discontinued the use of the Fee Filer System and incorporated this system into CORES. *What You Owe – Interstate Telecommunications Service Providers and Toll-Free Number Regulatory Fees for FY 2022*, Regulatory Fees Fact Sheet, 2022 WL 4299756 (Sept. 16, 2022).

[150] *See, e.g.*, 47 CFR §§ 1154, 1157; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Kajeet NAL*, 26 FCC Rcd at 16686-87, para. 6; *NTS NAL*, 25 FCC Rcd at 5139, para. 4.

[151] *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

[152] *See Telrite NAL*, 23 FCC Rcd at 7241, para. 22; *See also Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15.

[153] *See Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global NAL*, 23 FCC Rcd at 6140, para. 33.

[154] The Commission's rules establish that the requirement to pay federal regulatory fees does not end until the contributor fully pays all assessments required under the Commission's rules. *See* 47 CFR § 1.1157(b)(1) ("Payments of standard regulatory fees applicable to certain wireless radio, mass media, common carrier, cable and international services *shall be filed in full* on an annual basis."); *id.* § 1.1157(c) (providing that in addition to having a continuing obligation to pay delinquent regulatory fees, a party is also obligated to pay a penalty if the payment is submitted "*after the date* the Commission establishes for the payment of standard regulatory fees and for any installment payment.") (emphasis added).

[155] *See* OMD December 15, 2022, E-mail.

[156] *See Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global NAL*, 23 RCC Rcd at 6140, para. 33.

[157] 47 U.S.C. § 503(b).

[158] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act ($100,000 per violation or per day of a continuing violation and a statutory maximum of $1,000,000 for a single act or failure to act). *See Amendment of Section 1.80(b) of the*

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forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[159] In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[160] The forfeiture guidelines listed in section 1.80 of the Commission's rules specifically "are intended as a guide for frequently recurring violations" and not "a complete or exhaustive list of violations."[161]

40. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.[162] Under section 1.80 of the Commission's rules, we may adjust a forfeiture upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.[163] We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[164]

41. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if "the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."[165] In this case, we propose forfeitures for the Company's failures to pay its USF contributions fully between August 15, 2018, and June 1, 2022, to pay its TRS Fund contributions fully between August 17, 2018, and July 5, 2022, to pay its NANP administration assessments fully between October 15, 2019, and July 10, 2022, and to pay its federal regulatory fees fully between September 27, 2019, and December 4, 2022. As discussed above, the Act and the Commission's rules issued pursuant to the Act establish that the requirements to pay USF, TRS Fund, NANP and federal regulatory fee assessments impose continuing obligations to pay.[166] Because the obligations to pay delinquencies for these cost recovery obligations continue until the obligations are satisfied, the statute of limitations did not begin to run until the delinquencies were paid.[167]

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Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 22-1356 (EB Dec. 23, 2022) (*2022 Inflation Update Order*); *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) (*2022 Inflation Update Publication*).

[159] 47 U.S.C. § 503(b)(2)(E).

[160] 47 CFR § 1.80(b)(10), Table 1 to Para. (b)(10).

[161] *See Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17109-10, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (*1997 Forfeiture Guidelines Order*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[162] *See 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

[163] 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10). *See also 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

[164] 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

[165] 47 U.S.C. § 503(b)(6)(B).

[166] *See supra* notes 120, 132, 143, and 154 and accompanying text.

[167] *See, e.g.*, *Earle v. District of Columbia*, 707 F.3d 299, 307 (D.C. Cir. 2012) (When "the text of the pertinent law imposes a continuing obligation to act . . . 'a party can continue to violate it until that obligation is satisfied and the statute of limitations will not begin to run until it does.'") (quoting *AKM LLC v Secretary of Labor*, 675 F.3d 752, 763 (D.C. Cir. 2012) (Garland, J. concurring)); *Yukon-Kuskokwim Health Corp. v. U.S.*, 444 F.Supp.3d 215, 220-21 (D.D.C. 2020) (finding defendants ignored deadline to act for over 25 years, did not fulfill their obligation, and
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A. Forfeiture Methodology for Payment Violations

42. In February of 2015, in an attempt to improve the efficiency of USF, TRS Fund, LNP, NANP, and federal regulatory fee payment enforcement, the Commission adopted a policy statement relating to calculating forfeitures for these payment violations.[168] In appropriate cases, the Commission planned to determine forfeitures for these payment violations by multiplying a debt for each of these federal payment requirements by three, *i.e.*, the Commission would use a "treble damages" forfeiture method.[169] Industry associations filed Petitions for Reconsideration and Stay of the *2015 Forfeiture Policy Statement*,[170] but the Commission has not utilized the "treble damages" forfeiture method in an enforcement item adjudicating a USF, TRS Fund, LNP, NANP, or federal regulatory fee payment violation. On May 26, 2023, the Commission adopted an order dismissing the Petition for Reconsideration and Petition for Stay on the grounds that the Commission decided to vacate the *2015 Forfeiture Policy Statement* in favor of determining appropriate forfeitures adjudicated on a case-by-case basis.[171] Accordingly, the Commission will determine an appropriate forfeiture for each USF, TRS Fund, LNP, NANP, or federal regulatory fee payment violation case by applying the factors in section 503(b)(2)(E) of the Act, the *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission's rules.[172] This will enable the Commission to issue penalties for each payment violation that is closely tailored to the specific circumstances of each individual adjudication.[173]

B. Failure to Comply with USF Payment Obligations

43. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the USF payment requirements to be very serious.[174] The USF is a multibillion-dollar program that depends on service providers submitting accurate revenue information in Worksheet filings.[175] By repeatedly underreporting its revenues and preventing USAC from verifying the revenues,

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pertinent code imposed a "'continuing obligation to act' on Defendants such that they 'continue to violate it until that obligation is satisfied.'"); *Appalachian Voices v. McCarthy*, 989 F.Supp.2d. 30, 45 (D.D.C. 2013) (concluding that pertinent law "imposes 'a continuing obligation to act'" and defendant "'continue[s] to violate it until that obligation is satisfied.'").

[168] *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Policy Statement, 30 FCC Rcd 1622 (2015) (*2015 Forfeiture Policy Statement*).

[169] *Id.* at 1623-24, para. 6.

[170] *See* Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL for Reconsideration of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015), https://www.fcc.gov/ecfs/file/download/DOC-55f611f51b800000-A.pdf?file_name=CTIA.pdf; Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL for Stay of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015).

[171] *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Memorandum Opinion and Order, FCC 23-42 (2023) (*2023 Forfeiture Policy Order*).

[172] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd 17087. When establishing a forfeiture, section 503(b)(2)(E) of the Act requires the Commission to 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." *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4722-23, para. 34 (2006) (*Globcom Forfeiture Order*).

[173] *See 2023 Forfeiture Policy Order* at paras. 6-8; *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 34.

[174] *See* 47 U.S.C. § 503(b)(2)(E).

[175] *See, e.g.*, *Proposed Second Quarter 2023 Universal Service Contribution Factor*, DA 23-213, 2023 WL 2559889 (OMD Mar. 14, 2022). The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors' total projected collected end-user interstate and international telecommunications revenues, net of projected contributions. *Id.* at *1. For the
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PayG's payment violations spanned approximately four years and totaled $338,702 to the nearest dollar. We have also considered the degree of the Company's culpability.[176] The Company is highly culpable for repeatedly not paying and underpaying its USF contributions for four years, particularly when USAC repeatedly prompted the Company to comply with the reporting and payment requirements during this four-year period. We thus find that PayG's misconduct was egregious, and resulted in substantial harm to the Commission's USF cost recovery requirements implemented under the Act.[177] Moreover, PayG's repeated and continuous violations resulted in a substantial economic gain to the Company, which withheld $338,702 of USF contributions for approximately four years.[178]

44. To determine forfeitures for USF payment violations, the Commission has previously applied the American Rule of accounting[179] to delinquent service providers' USF accounts to determine the number of unpaid monthly USF contributions within a year of a NAL.[180] The Commission has previously assessed a base forfeiture of $20,000 for each month in which a contributor failed to pay a required USF contribution, and $10,000 for each month in which a contributor failed to pay a required USF contribution in full.[181] We have also previously added to base forfeitures an upward adjustment of 50 percent of the delinquent contributor's USF delinquency to account for the degree of harm to the USF.[182]

45. In the *Globcom Forfeiture Order*, however, the Commission stated that service providers have notice that the Commission could issue the statutory maximum forfeiture under section 503(b) of the Act for each violation of the Commission's payment requirements.[183] Thus in 2003, service providers like Globcom had notice that the maximum potential forfeiture for *each* continuing payment violation could be as high as the statutory maximum, which at that time was $1,200,000.[184] As of January 15, 2023, the maximum forfeiture under section 503(b)(2)(B) has been increased to $2,372,677, which is an increase of $1,172,677.[185] In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and

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second quarter of 2023 alone, the total projected program support needed was $2,073,280,000, and the total projected collected interstate and international end-user telecommunications revenues was $8,761,743,000. *Id.* Thus, when service providers underreport end-user telecommunications revenues, and as a result underpay USF contributions (in this case for approximately four years), the effects are widespread.

[176] *See id.*

[177] *See* 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

[178] *See id.*

[179] *See* 47 CFR § 54.713(e) (providing that payments for USF assessments "shall apply . . . to the contributor's oldest past due amounts first.").

[180] *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6647, paras. 23-24; *Kajeet NAL*, 26 FCC Rcd at 16694-95, paras. 21-22.; *NTS NAL*, 25 FCC Rcd at 5142, paras.12-13.

[181] *Id.*

[182] *Id.*

[183] *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35. "Pursuant to section 503(b) of the Act, weighing the factors set forth in the statute, the Commission may determine the appropriate forfeiture within the range permitted by the statute." *Id.* (citing 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27).

[184] *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35 & n.105 ("Each failure to pay the amount due each month constituted a violation that continued for more than 10 days.").

[185] *See 2022 Inflation Update Order*, 2023 WL 1067981; *2022 Inflation Update Publication*, 88 Fed. Reg. 783.

circumstances of the violations.[186] Moreover, when the Commission issued the *Globcom Forfeiture Order*, the Commission had "repeatedly warned carriers that larger forfeitures and even revocation of operating authority might be in store for future universal service nonpayment cases."[187] The Commission further warned service providers that if the forfeiture methodology described in the *Globcom Forfeiture Order* is not adequate to deter violations of the Commissions payment rules, "our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them."[188]

46. The forfeiture methodology set forth in the *Globcom NAL* was established approximately 20 years ago.[189] PayG's conduct illustrates that the Commission needs to again increase forfeitures for payment violations in order to provide an effective deterrent.[190] When the *Globcom NAL* was issued in 2003, section 503(b)(2)(B) of the Act authorized the Commission to assess a forfeiture of up to $120,000 for each violation or each day of a continuing violation.[191] As of January 15, 2023, the Commission's forfeiture authority has increased to $237,268 for each violation or each day of a continuing violation, which is an increase of $117,268.[192] Given the evolution of our statutory forfeitures over time, the need for increased deterrence based on our experience with nonpayment of required contributions, the importance of the USF, and the facts and circumstances of PayG's willful and repeated violations of its contribution obligations, we find it appropriate to increase the base forfeiture for PayG's USF payment violations from $20,000 to $100,000 for each month in which the Company failed to pay a required USF contribution. Additionally, for the same reasons, we likewise impose an upward adjustment of 100 percent of PayG's USF delinquency to account for the degree of harm to the USF.[193]

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[186] *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, para. 30 (citing *SBC Communications, Inc., v. FCC*, 373 F.3d 140, 151 (D.C. Cir. 2004) (holding that the service provider's conduct constituted five individual continuing violations and the forfeiture amount was rationally related to goal of deterrence)).

[187] *Id.* at 4723, para. 36 (noting that the Commission had "imposed increasingly larger forfeitures for USF [payment] violations because of the gravity of violations in this area and the accumulating record of non-compliance"). *See, e.g.*, *America's Tele-network Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 20903, 0906, paras. 8-9 (2000), *forfeiture issued*, Forfeiture Order, 15 FCC Rcd 24391 (2000); *Intellicall Operator Servs.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13539, 13541, paras. 7-8 (2000), *forfeiture issued*, Forfeiture Order, 15 FCC Rcd 21771 (2000); *Matrix Telecom, Inc*., 15 FCC Rcd 13544, 13546-47, paras. 7-8 (2000), *forfeiture issued*, Forfeiture Order, 16 FCC Rcd. 10553 (2001), *reconsideration denied*, Memorandum Opinion and Order, 16 FCC Rcd 18105 (2001).

[188] *Globcom Forfeiture Order*, 21 FCC Rcd at 4724, para. 38.

[189] *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), *forfeiture issued*, *Globcom Forfeiture Order*, 21 FCC Rcd 4710.

[190] PayG's payment violations totaled $338,702 to the nearest dollar, spanned four years, and during this four-year period, USAC repeatedly attempted to prompt the Company's compliance with the payment requirements. *See generally* First USAC Letter; Second USAC Letter.

[191] *Globcom NAL, Inc.*, 18 FCC Rcd at 19902, para. 22.

[192] *See 2022 Inflation Update Order*, 2023 WL 1067981; *2022 Inflation Update Publication*, 88 Fed. Reg. 783.

[193] *See* 47 U.S.C. § 503(b)(2)(E) ("In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require"); 47 CFR § 1.80 (providing in part for upward adjustments for egregious misconduct, substantial harm, substantial economic gain, and a repeated or continuous violations, which as addressed above, are demonstrated in this case); *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (noting that the Commission retained its authority to "issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

47. We therefore propose a $100,000 base forfeiture for each of the eight USF payment violations that occurred within the last year, which provides for a total base forfeiture of $800,000.[194] We also apply an upward adjustment of 100 percent of PayG's USF delinquency that occurred as a result of the Company inaccurately reporting its revenues in its Annual Worksheets for 2018 through 2021, which was $338,702 to the nearest dollar.[195] We therefore propose a total forfeiture of $1,138,702 ($800,000 base forfeiture + $338,702 upward adjustment) for PayG's failure to pay eight USF contributions by the payment deadlines.

48. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's USF payment rules, we warn service providers that pursuant to our warning in *Globcom* the Commission could issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for USF payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.[196] Currently, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against service providers like PayG of up to $237,268 for each violation or each day of a continuing violation, up to a statutory maximum of $2,372,677 for a single act or failure to act,[197] and maximum forfeiture amounts are adjusted annually for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act).[198]

C. Failure to Comply with TRS Fund Payment Obligations

49. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the TRS Fund payment requirements to be very serious.[199] By repeatedly underreporting its revenues and preventing USAC from verifying the revenues, PayG's payment violations spanned approximately four years and totaled over $60,000. The Company is highly culpable for repeatedly not paying and underpaying its TRS Fund contributions for four years, particularly when USAC repeatedly prompted PayG to fully report the Company's revenues and thereby fully pay the Company's TRS and other payment requirements during this four-year period.[200] We thus find that PayG's misconduct was egregious, and resulted in substantial harm to the Commission's TRS Fund cost recovery requirements.[201] Moreover, PayG's repeated and continuous violations resulted in a substantial economic gain to the Company, which withheld a total of $61,383 in TRS Fund contributions for approximately four years.[202]

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[194] Applying the American Rule of accounting, *see* 47 CFR § 54.713(e), PayG failed to pay on time USF contributions that were due on (1) October 15, 2021; (2) November 15, 2021; (3) December 15, 2021; (4) January 14, 2022; (5) February 15, 2022; (7) March 15, 2022; and (8) April 15, 2022. *See* Second USAC Letter, Attachment – Account History. PayG did not pay these contributions until June 2, 2022. *See id.* at 3.

[195] Second USAC Letter at 3.

[196] *See* 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

[197] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2); *2022 Inflation Update Order*, 2023 WL 1067981; *2022 Inflation Update Publication*, 88 Fed. Reg. 783.

[198] Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (1990 Inflation Adjustment Act). Federal agencies must annually adjust civil monetary penalties, and publish each annual adjustment by January 15. 1990 Inflation Adjustment Act § 4(a). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." 1990 Inflation Adjustment Act § 6.

[199] *See* 47 U.S.C. § 503(b)(2)(E).

[200] *See generally* First USAC Letter; Second USAC Letter.

[201] *See* 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

[202] *See id.*

50. To determine forfeitures for TRS Fund payment violations, the Commission has previously applied a base forfeiture of $10,000 for each year a service provider has failed to pay or to pay the TRS Fund payment obligations fully.[203] The Commission has also previously applied an upward adjustment of 50 percent of the delinquent contributor's TRS Fund debt.[204]

51. Service providers have received notice, however, that the Commission could issue the statutory maximum forfeiture under section 503(b)(2)(B) of the Act for each violation of the Commission's TRS Fund payment requirements.[205] In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and circumstances of the violations.[206] The Commission warned service providers that if the forfeiture methodology described in the *Globcom Forfeiture Order* is not adequate to deter violations of the Commissions payment rules, we would exercise our statutory authority to impose larger penalties.[207]

52. PayG's conduct illustrates that the Commission needs to again increase forfeitures for TRS Fund payment violations in order to provide an effective deterrent.[208] Consistent with our adjustments to the forfeiture methodology for PayG's USF payment violations, we therefore increase PayG's base forfeiture for TRS Fund payment violations from $10,000 to $50,000 for each year in which PayG has failed to pay or pay fully a required TRS Fund contribution. Additionally, for the same reasons, we likewise impose an upward adjustment of 100 percent of PayG's TRS Fund delinquency to account for the degree of harm to the TRS Fund.[209]

53. We therefore propose a $50,000 base forfeiture for each of the four annual TRS Fund payment violations, which PayG did not pay until July 6, 2022, and which provides for a total base forfeiture of $200,000.[210] We also apply an upward adjustment of 100 percent of PayG's TRS Fund delinquency that occurred as a result of the Company inaccurately reporting its revenues in its Annual Worksheets for 2018 through 2021, which was $61,383 to the nearest dollar.[211] We therefore propose a total forfeiture of $261,383 ($200,000 base forfeiture + $61,383 upward adjustment) for PayG's failure to pay TRS Fund contributions by the payment deadlines for four years.

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[203] *See PTT Phone Cards, Inc*., Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11531, 11543-54, paras. 31-32 (2014) (*PTT NAL*), *forfeiture assessed*, Forfeiture Order, 30 FCC Rcd 14701 (2015); *RB Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 4393, 4402, paras. 25-26 (2012) (*RB Commc'ns NAL*), *forfeiture assessed*, Forfeiture Order, 29 FCC Rcd 5668 (2014), *pet. recon. denied*, 30 FCC Rcd 4720 (2015); *ADMA NAL*, 24 FCC Rcd at 852-53, paras. 33, 35.

[204] *See PTT NAL*, 29 FCC Rcd at 11543-54, paras. 31-32; *RB Commc'ns* NAL, 27 FCC Rcd at 4402, paras. 25-26; *ADMA NAL*, 24 FCC Rcd at 852-53, paras. 33, 35.

[205] *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, 4723, paras. 31, 35 (citing 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27).

[206] *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, para. 30.

[207] *Id.* at 4724, para. 38.

[208] PayG's TRS Fund payment violations totaled $61,383.00 to the nearest dollar, spanned four years, and during this four-year period, USAC repeatedly attempted to prompt the Company's compliance with the payment requirements. *See generally* First USAC Letter; Second USAC Letter.

[209] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22.

[210] Monthly payments were due for each August to July period following each Annual Worksheet filing deadline of April 1, 2018 through 2021. *See* RolkaLoube E-mail at 2.

[211] PayG's delinquency for TRS Fund obligations began on August 17, 2018, and PayG did not fully pay TRS Fund assessments based on verified revenues in the Company's Annual Worksheet revisions for 2018 through 2021 until July 6, 2022, approximately four years after payments were first due. *See id.*

54. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's TRS Fund payment rules, we warn service providers that, pursuant to the warning in *Globcom*, the Commission could issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for TRS Fund payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.[212]

D. Failure to Comply with NANP Administration Payment Obligations

55. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the NANP administration payment requirements to be substantial.[213] By repeatedly underreporting its revenues and preventing USAC from verifying the revenues, PayG's payment violations spanned approximately three years. The Company is culpable for repeatedly underpaying its NANP administration obligations for three years, particularly when USAC repeatedly prompted PayG to fully report the Company's revenues and thereby fully pay the Company's NANP and other payment requirements during this three-year period.[214]

56. To determine forfeitures for NANP payment violations, the Commission has previously applied a base forfeiture of $10,000 for each year a service provider failed to pay or to pay a NANP payment obligation fully.[215] We therefore propose a $10,000 base forfeiture for each of the three annual NANP payment violations, which PayG did not pay until July 11, 2022, and which provides for a total proposed forfeiture of $30,000 ($10,000 x 3 violations).

57. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's NANP payment rules, we warn service providers that the Commission could adjust the forfeiture methodology and issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for NANP payment violations up to the statutory maximum forfeiture authorized under section 503(b)(2) of the Act for each violation.[216]

E. Failure to Comply with Federal Regulatory Fee Payment Obligations

58. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the federal regulatory fee payment requirements to be substantial.[217] By repeatedly underreporting its revenues and preventing USAC from verifying the revenues, PayG's payment violations spanned three years and totaled nearly $4,000. The Company is highly culpable for repeatedly not paying and underpaying its federal regulatory fees over three years, particularly when USAC repeatedly prompted PayG to fully report the Company's revenues and thereby fully pay the Company's federal regulatory fee and other payment requirements during this three-year period.[218]

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[212] *See* 47 U.S.C. § 503(b); 47 CFR § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

[213] *See* 47 U.S.C. § 503(b)(2)(E).

[214] *See id.*

[215] *See Telseven NAL*, 27 FCC Rcd at 6648, para. 26; *Telrite NAL*, 23 FCC Rcd at 7245, para. 33; *Compass Global NAL*, 23 FCC Rcd at 6141, para. 37.

[216] *See* 47 U.S.C. § 503(b); 47 CFR § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

[217] *See* 47 U.S.C. § 503(b)(2)(E).

[218] *See id.*

59. The Commission has previously applied a base forfeiture of $10,000 per year for federal regulatory fee payment violations.[219] Based upon the facts and circumstances of this particular case, and given the total amount of the three federal regulatory fee payment violations,[220] we find that the $10,000 base forfeiture is appropriate for each of PayG's three federal regulatory fee payment violations. We thus propose a total forfeiture of $30,000 ($10,000 x 3 violations).

60. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's federal regulatory fee payment rules, we warn service providers that the Commission could adjust the forfeiture methodology and issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for federal regulatory fee payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.[221]

F. Total Proposed Forfeiture

61. Consistent with the Act and the Commission's rules,[222] we have exercised our discretion and considered the specific circumstances related to the Company and the violations it apparently committed, and we find the Company apparently liable for a forfeiture of one million four hundred sixty thousand eighty-five dollars ($1,460,085). The total proposed forfeiture includes forfeitures of (a) one million one hundred thirty-eight thousand seven hundred two dollars ($1,138,702) for the Company's willful and repeated failures to pay or pay fully USF contributions when due; (b) two hundred sixty-one thousand three hundred eighty-three dollars ($261,383) for the Company's willful and repeated failures to pay or pay fully TRS Fund contributions when due; (c) thirty thousand dollars ($30,000) for the Company's willful and repeated failures to pay fully NANP administration assessments when due; and (d) thirty thousand dollars ($30,000) for the Company's willful and repeated failures to pay or pay fully federal regulatory fees when due.

V. CONCLUSION

62. We have determined that PayG apparently violated sections 251(e)(2) and 254(d) of the Act and sections 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules by willfully failing to pay or pay fully its USF contributions, TRS Fund contributions, NANP administration obligations and federal regulatory fees when these federal payment requirements were due.[223] As such, PayG is apparently liable for a forfeiture of $1,460,085.[224]

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[219] *See Telseven NAL*, 27 FCC Rcd at 6648, para. 28; *Telrite NAL*, 23 FCC Rcd at 7245, para. 35; *Compass Global NAL*, 23 FCC Rcd at 6141-42, para. 38.

[220] PayG failed to pay or underpaid its federal regulatory fee by a total of $3,952.00 between September 27, 2019, and December 4, 2022. *See* OMD December 15, 2022, E-mail.

[221] *See* 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

[222] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

[223] 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A). This Notice of Apparent Liability applies exclusively to the Commission rule violations by PayG described herein and does not address any other potential criminal, civil or administrative liabilities of PayG and its successors, assigns, agents or consultants.

[224] 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.

VI. ORDERING CLAUSES

63. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act[225] and section 1.80 of the Commission's rules,[226] PayG, LLC d/b/a Skyswitch is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one million four hundred sixty thousand eighty-five dollars ($1,460,085) for willful and repeated violations of sections 251(e)(2) and 254(d) of the Act, 47 U.S.C. §§ 251(e)(2), 254(d), and sections 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules, 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A).

64. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,[227] within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, PayG, LLC d/b/a Skyswitch **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 67 below.

65. In order for PayG, LLC d/b/a Skyswitch to pay the proposed forfeiture, PayG, LLC d/b/a Skyswitch shall notify Pamela Gallant at Pamela.Gallant@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and David Janas at David.Janas@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, PayG, LLC d/b/a Skyswitch shall send electronic notification of payment to Pamela Gallant at Pamela.Gallant@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and David Janas at David.Janas@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[228]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[229] or printed CORES form[230] 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).[231] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

[225] 47 U.S.C. § 503(b).

[226] 47 CFR § 1.80.

[227] *Id.*.

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

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

[230] 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.

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

- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

66. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[232] 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.

67. 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.[233] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearing Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Pamela.Gallant@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, and EnforcementBureauIHD@fcc.gov.

68. 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.[234] 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

[232] *See* 47 CFR § 1.1914.

[233] *Id.* §§ 1.16, 1.80(g)(3).

[234] 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[235]

69. **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 Geoff Bloss, Chief Executive Officer, PayG, LLC d/b/a Skyswitch, 295 Madison Avenue, 5th Floor, New York, NY 10017, and to Marc Korman, Esq., Sidley Austin LLP, 1501 K Street, NW, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[235] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	File No.: EB-TCD-21-00032652
	)	NAL/Acct. No.: 202132170001
John M. Burkman	)	FRN: 0031299985
Jacob Alexander Wohl	)	FRN: 0031300023
J.M. Burkman & Associates LLC	)	FRN: 0031300064

FORFEITURE ORDER

Adopted: June 5, 2023 **Released: June 6, 2023**

By the Commission:

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I. INTRODUCTION

1. This Forfeiture Order advances the top consumer protection priority for the Federal Communications Commission (FCC or the Commission)[1]—combatting unlawful, unwanted telephone calls. In doing so, it assesses a forfeiture of $5,134,500 against John M. Burkman (Burkman), Jacob Alexander Wohl (Wohl), and J.M. Burkman & Associates LLC (Burkman & Associates) (collectively, the Respondents) for making 1,141 unlawful robocalls.[2] After evaluating the evidence, including Respondents' response, we find that Respondents made robocalls to wireless numbers without the recipients' prior express consent, absent an emergency purpose, in violation of the Telephone Consumer Protection Act (TCPA), as codified in section 227(b) of the Communications Act of 1934, as amended (Act), and section 64.1200(a)(1)(iii) of the Commission's rules.[3]

II. BACKGROUND

2. *Legal Framework.* Under the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act, the Commission may issue a Notice of Apparent Liability for Forfeiture for

[1] Federal Commc'ns Comm'n, *Consumer Guide: Stop Unwanted Robocalls and Texts* (Nov. 12, 2020), https://www.fcc.gov/sites/default/files/stop_unwanted_robocalls_and_texts.pdf (last visited Apr. 16, 2023).

[2] Burkman and Wohl each have pleaded guilty and were sentenced for one count of criminal telecommunications fraud in state court in Ohio and have also been found liable in a civil action in federal court for conduct related to making the calls at issue in this Forfeiture Order. *See* Def.'s Tr. of Proceedings at 11, *Ohio v. Wohl*, Nos. CR-654013-A, 654013-B (Cuyahoga County Ct. Com. Pl., Oct. 24, 2022) (Burkman and Wohl each pleaded guilty to one count of telecommunications fraud for making robocalls in Cuyahoga County, Ohio, for which they were sentenced to 24 months of supervision, required to pay a $2,500 fine, and were ordered to work 500 hours of community service); *Nat'l Coal. on Black Civic Participation v. Wohl*, No. 1:20-cv-8668, 2023 WL 2403012, at *37 (S.D.N.Y. Mar. 8, 2023) (respondents found liable for violating the Voting Rights Act and Ku Klux Klan Act).

[3] *See* 47 U.S.C. § 227(b); 47 CFR § 64.1200(a)(1)(iii).

violations of section 227(b) of the Act without first issuing a citation.[4] The TCPA and the Commission's implementing rules prohibit prerecorded voice calls to wireless telephone numbers without the recipients' prior express consent—unless made for an emergency purpose.[5] The TCPA's restrictions on prerecorded calls to wireless numbers apply equally to telemarketing and informational calls.[6] Making prerecorded calls to wireless numbers without the recipients' prior express consent is a violation of the TCPA regardless of the caller's intent.[7]

3. Liability under the TCPA attaches to the person(s) or entity(ies) that made the call. To determine who made a robocall, the Commission looks to the totality of the facts and circumstances to determine: 1) who took the steps necessary to physically place the call; and 2) whether another person or entity was so involved in placing the call as to be deemed to have initiated it, considering the goals and purposes of the TCPA.[8]

4. *Factual Background.* On September 15, 2020, Enforcement Bureau (Bureau) learned about thousands of prerecorded voice message calls relating to upcoming elections.[9] The Commission also received complaints about the calls.[10] The Bureau confirmed the existence of the robocalling campaign and identified the two dialing platforms that dialed the prerecorded calls on behalf of Respondents. The Bureau then issued subpoenas to these dialing platforms requesting call detail records, service agreements, and copies of the recordings.[11]

[4] 47 U.S.C. § 227(b)(4); Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 3(a)(1); 133 Stat. 3274 (2019) (TRACED Act).

[5] 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii); *see also Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335 (2020) (invalidating the debt collection exception in 47 U.S.C. § 227(b)(1)(A)(iii)). The Commission has granted exemptions to the prior-express-consent requirement, relying on the exemption authority Congress provided in 47 U.S.C. § 227(b)(2)(C). *See, e.g.*, 47 CFR § 64.1200(a)(9). None of those narrow exemptions are applicable to the facts set forth in this Forfeiture Order.

[6] *See, e.g.*, 47 U.S.C. § 227(b)(1); 47 CFR § 64.1200(a); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 FCC Rcd 1830, 1838-1844, paras. 20-34 (2012) (*2012 TCPA Order*); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991/Request of ACA International for Clarification and Declaratory Ruling*, 23 FCC Rcd 559, 565, para. 11 (2008) (*ACA Declaratory Ruling*).

[7] Section 3 of the TRACED Act removed the requirement that the Commission issue a citation, or warning, pursuant to section 503(b)(5) of the Act before the Commission may propose a monetary forfeiture under section 227(b). *See* TRACED Act § 3(a)(1), 133 Stat. at 3274 (adding 47 U.S.C. § 227(b)(4)(A)).

[8] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, et al., Declaratory Ruling and Order, 30 FCC Rcd 7961, 7980, paras. 29-30 (2015) (*2015 Declaratory Ruling and Order*)

[9] This information originated from The Lawyers' Committee For Civil Rights Under Law (Lawyers' Committee). *See* E-mail from {[ ]}, to Raul Rojo, Attorney Advisor, Federal Communications Commission (Sept. 24, 2022, 02:19:21 PM EST) (on file in EB-TCD-21-00032652). The Lawyers' Committee is a nonprofit organization whose principal mission is to, "secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities." Lawyers' Committee, Mission, https://lawyerscommittee.org/mission (last visited July 18, 2022). Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[10] *See* Complaint #4182753; *see also* Complaint #4183268 (on File No. EB-TCD-21-00032652).

[11] *See* {[ ]} Subpoena Response (Mar. 5, 2021) (on file in EB-TCD-21-00032652 (Gravis Subpoena Response)); {[ ]} *see also* Subpoena Response to Ohio Attorney General's Office (on file in EB-TCD-21-00032652).

5. The Bureau listened to the call recordings to confirm that they were prerecorded message calls.[12] The messages told potential voters that if they voted by mail, their "personal information will be part of a public database that will be used by police departments to track down old warrants and be used by credit card companies to collect outstanding debts."[13] The recorded messages identified Burkman and Wohl by name and claimed to be made by "Project-1599," a fictitious organization run by Respondents.[14]

6. The subpoena responses also provided call detail records for every call that the providers dialed on behalf of Burkman and Wohl.[15] The Bureau analyzed the call detail records using industry-standard, commercially available software, and a database of known assigned wireless numbers to determine whether any of the robocalls went to wireless phones. It was determined that 1,141 calls were made to wireless telephones.

7. The subpoena responses produced records of e-mail exchanges between Burkman and Wohl and a representative of the dialing platform. In the e-mails, Respondents discussed the voice messages, which zip codes to call, pricing, and other matters related to the robocalling campaign.[16] These e-mail exchanges demonstrated Respondents' intimate knowledge of and involvement with the robocalling campaign.[17]

8. The Bureau called each of the consumers assigned to the wireless phone numbers to (a) confirm that they were assigned the numbers during the relevant time period, and (b) determine whether the consumer had consented to receiving the calls.[18] Two of those consumers were interviewed by the Bureau and confirmed that they had not given consent to receive the calls and had not heard of Burkman, Wohl, or Burkman & Associates prior to receiving the robocalls.[19] Further, Respondents have not provided the Bureau with evidence of consent for any of the 1,141 calls to wireless numbers at issue in this Notice.

9. On August 24, 2021, the Commission issued a Notice of Apparent Liability (*Notice*), proposing a $5,134,500 penalty for violations of the Act and section 64.1200(a)(1)(iii) of the

[12] 788 wireless calls were made on August 26, 2020, and 353 wireless calls were made on September 14, 2020, for a total of 1,141 calls to wireless numbers. Bureau staff listened to samples of the recorded calls, each of which was consistent with a previously recorded audio message. *See* Call Detail Records (on file in EB-TCD-21-00032652).

[13] *See* Call Transcripts (on file No. EB-TCD-21-00032652). The full recording stated:

> Hi, this is Tamika Taylor from Project 1599, the civil rights organization founded by Jack Burkman and Jacob Wohl. Mail-in voting sounds great, but did you know that if you vote by mail, your personal information will be part of a public database that will be used by police departments to track down old warrants and be used by credit card companies to collect outstanding debts? The CDC is even pushing to use records for mail-in voting to track people for mandatory vaccines. Don't be finessed into giving your private information to the man, stay safe and beware of vote by mail.

Id. While we provide details of the transcript for purposes of the Background, we reiterate that the content of the calls is not relevant to our determination under the TCPA and the Commission's rules. *See supra* para. 2; *see also Kenneth Moser dba Marketing Support Systems*, Forfeiture Order, 35 FCC Rcd 13415, 13432, paras. 37-38 (2020) (*Moser Forfeiture Order*) (rejecting the assertion, in the illegal spoofing context, that the Commission's action "was based on the content of the prerecorded message").

[14] The recordings themselves refer to Project-1599 as "the civil rights organization founded by Jack Burkman and Jacob Wohl." *See* Robocall Audio File (on file in EB-TCD-21-00032652).

[15] *See* Call Detail Records (on File No. EB-TCD-21-00032652).

[16] *See* E-mail Records (on file in EB-TCD-21-00032652).

[17] *2015 Declaratory Ruling and Order*, *supra* note 8, at para. 30.

[18] *See* {[redacted]} Decl. (on file in No. EB-TCD-21-00032652).

[19] *See id.* at para. 19.

Commission's rules. On September 23, 2021, Respondents submitted a response (*Burkman Response* or *Response*) to the *Notice*.[20] We address the substantive arguments below.

III. DISCUSSION

10. *The Robocalls Violated the TCPA.* Respondents made 1,141 unlawful robocalls to wireless numbers in violation of the TCPA and Commission rules. A review of sample recordings determined that the calls were prerecorded messages. E-mail communications between a dialing platform and Burkman further demonstrate that the calls were prerecorded messages.[21] Respondents do not contest that the calls contained prerecorded messages. Respondents do not claim that they had prior express consent to place the calls, nor do they allege that the calls were made for an emergency purpose.

11. As a threshold matter, Respondents state that "the robocalls attributed to Respondents were exempt, facially permissible, and legally compliant political calls."[22] Respondents suggest that the Commission should have "prosecuted the entities responsible for the alleged TCPA violation: the dialing platforms."[23] However, the TCPA does not differentiate among callers; it applies to anyone who makes an unlawful robocall.[24] As set forth below, Respondents made the calls and had the burden to obtain consent for each call.[25] Respondents did not provide evidence that they or the dialing platform had consent for any of the calls.

12. *Respondents Made the Robocalls.* Respondents assert that they did not make the robocalls at issue and are therefore not liable under the TCPA. The TCPA, however, states that it is unlawful—

> . . . . for any person . . . to *make any call* . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.[26]

13. Respondents offer several arguments to support their claim that they did not make the calls. *First*, Respondents assert that the *Notice* relied on a case, *Dish Network*, that Respondents claim is inapt because it addressed a different provision of the TCPA and a different implementing regulation than the ones at issue here.[27] Respondents claim that the TCPA provision at issue in this case, section 227(b)(1)(A)(iii), uses the word "make" and does not include the word "initiate." Thus, Respondents

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[20] *See Response of John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman & Associates LLC to Notice of Apparent Liability for Forfeiture* (Sept. 23, 2021) (on file in EB-TCD-21-00032652) (hereinafter *Burkman Response*).

[21] *See* E-mail Records (on file in EB-TCD-21-00032652).

[22] *See Burkman Response* at 44.

[23] *See id.* at 44 (asserting that the Commission should have "prosecuted the entities responsible for the alleged TCPA violation: the dialing platforms").

[24] 47 U.S.C. § 227(b)(1)(A)(iii) (it is unlawful "***for any person*** . . . to make any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call." (emphasis added)).

[25] *See Dialing Services LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6200, para. 23 (2017) (*Dialing Services Forfeiture Order); Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that "[s]hould a question arise as to whether express consent was provided, the burden will be on [the caller] to show it obtained the necessary prior express consent") (*2008 TCPA Order*).

[26] *See* 47 U.S.C. § 227(b)(1)(A)(iii)

[27] *See Burkman Response*, *supra* note 20, at 16; *Joint Petition filed by DISH Network LLC*, Declaratory Ruling, 28 FCC Rcd 6574 (2013) (*Dish Declaratory Ruling*).

argue the Commission's *Notice* improperly relied on the *Dish Network* decision for its apparent finding that Respondents were liable under the TCPA because they *initiated* the robocalls. Respondents state that they are only liable if they *made* the calls at issue, which they claim not to have done.

14. We find Respondents' argument unpersuasive. The Commission has used the words "make" and "initiate" interchangeably to describe the same conduct and does not draw any distinction between the two.[28] "The same logic that applies to the 'initiation' of calls under section 227(b)(1)(b) applies to the 'making' of calls under section 227(b)(1)(A)."[29] Thus, Respondents' argument fails because there is no relevant distinction between the terms "make" and "initiate." The Commission has determined that for the purposes of interpreting the TCPA, the words "initiate" and "make" have broad and overlapping meanings so as to be synonyms.[30] Moreover, the Commission has previously found that a person "makes" or "initiates" a call when there is a "direct connection between a person or entity and the making of a call."[31] We therefore reject Respondents' argument that we improperly relied on section 227(b)(1)(B), and that we cannot use precedent to help determine who makes a call.

15. *Second*, Respondents argue that they did not make the robocalls because they did not physically dial the numbers.[32] In our *2015 Declaratory Ruling and Order*, the Commission clarified that a caller may be found to have made or initiated a call in one of two ways: first, by "tak[ing] the steps necessary to physically place a telephone call," and, second, by being "so involved in the placing of a specific telephone call as to be directly liable for making it." To determine whether a party is "so involved," the Commission considers "the totality of the facts and circumstances surrounding the placing of a particular call."[33] Thus, the fact that the Respondents did not physically make the call is not dispositive. As discussed below, Respondents were indeed so involved as to be deemed to have initiated the calls.

16. Respondents argue that section 227(b) "only imposes liability upon persons that 'make' a telephone call or text," and that the *Notice* used a "nebulous methodology" to interpret what it means to "initiate" or "make" a call.[34] The Commission's methodology is not nebulous. As discussed above, the Commission uses a totality of the circumstances test to determine who is the maker of an unlawful call.

17. The Response notes that the Commission cited the *2015 FCC order*, which cites to the analysis in *Dish*. Respondents argue that the analysis in *Dish* was directed at the interpretation of the word "initiate" in a different provision of the TCPA, section 227(b)(1)(B), which they claim only addresses the liability of "sellers," and is therefore not applicable in this case.[35] Section 227(b)(1)(B) is not relevant here. As discussed above, the Commission has found that the same language concerning who

[28] 47 CFR § 64.1200(a)(1); *compare* 47 U.S.C. § 227(b)(1)(A), *with* 47 CFR § 64.1200(a)(1); *see also Dialing Services, LLC*, Notice of Apparently Liability for Forfeiture, 29 FCC Rcd 5537, 5542, para 14, n.30 (2014) (*Dialing Services NAL*) ("The Commission uses the words 'make' and 'initiate' interchangeably in its rules arising under § 227(b)(1)(A) without drawing any distinction.").

[29] *2015 Declaratory Ruling and Order*, 30 FCC Rcd at 7979, para. 27 n.95 (stating "[w]hile DISH Declaratory Ruling interpreted and applied section 227(b)(1)(B), the Commission has recently stated that the same logic that applies to the 'initiation' of calls under section 227(b)(1)(b) applies to the "making" of calls under section 227(b)(1)(A)").

[30] *Id.*

[31] *See Dialing Services NAL*, 29 FCC Rcd at 5543, para. 16 (quoting *Dish Declaratory Ruling*, 28 FCC Rcd at 6583, para. 26, and applying the language to section 227(b)(1)(A)).

[32] *Burkman Response* at 14-17.

[33] *2015 Declaratory Ruling and Order*, *supra* note 8, at para. 30.

[34] *See Burkman Response*, *supra* note 20, at 15.

[35] *Id*. at 19.

may be considered the "maker" of a call applies to both telemarketing and non-telemarketing calls.[36] Accordingly, the standard for determining whether a party may be deemed to have made the call applies to the present case, where the Commission found that Respondents violated section 227(b)(1)(A)(iii), which does not limit liability to "sellers."[37]

18. *Third,* Respondents argue that they could not be deemed to have made the calls because they did not have "control over the manner and means of the calls" and had no right to control how the calls were made.[38] The undisputed evidence, however, shows that Respondents were integrally involved in all facets of the robocall campaign. In e-mail exchanges with a dialing platform, Respondents provided the dialing platform with the audio recordings that they desired to use.[39] A dialing platform representative provided Burkman with instructions on how to upload and save the audio files.[40] Burkman also provided the dialing platform with zip codes and selected the timing and number of calls that would be made.[41]

19. Respondents do not dispute that they contracted with the dialing platform and directed that the calls be made to certain zip codes.[42] Respondents also acknowledge that they created the recordings and instructed the dialing platforms to play the recorded messages with each call.[43] Respondents contend that there is "no evidence demonstrating that the dialing platforms could not have mounted the calls without Burkman and Wohl having provided their names and/or a telephone number."[44] The Commission is not required to prove that the dialing platform *could not* have placed the unlawful calls without Respondents' involvement: only that Respondents were so involved that they may reasonably be deemed to have made them. When a person selects the message and is sufficiently involved in determining who will receive the calls, then it follows that they make the call and are liable under section 227(b)(1)(B) of the TCPA.[45]

20. On October 26, 2020, during a hearing in the United States District Court for the Southern District of New York, Respondents admitted that both Burkman and Wohl "prepared th[e] message" and "caused it to be sent:"

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[36] 47 CFR § 64.1200(a)(1); *compare* 47 U.S.C. § 227(b)(1)(A), *with* 47 CFR § 64.1200(a)(1); *see also Dialing Services NAL*, *supra* note 28, at para 14. ("The Commission uses the words 'make' and 'initiate' interchangeably in its rules arising under § 227(b)(1)(A) without drawing any distinction.").

[37] 47 U.S.C. § 227(b)(1)(A)(iii); *John M. Burkman, Jacob Alexander Wohl, J.M. Burkman & Assocs. LLC,* Notice of Apparently Liability for Forfeiture, 36 FCC Rcd 12979, 12988 (2021) (*Notice*).

[38] *See Burkman Response*, *supra* note 20, at 22.

[39] *See* e-mail from Jacob Wohl, to {[ ]} (Sept. 8, 2020, 17:45 EST) (on file in EB-TCD-21-00032652) ("Heres [sic] the tape we want to go out.").

[40] *See* Account Setup Call (on file in EB-TCD-21-00032652); *see also* e-mail from Jacob Wohl, to {[ ]}(Sept. 10, 2020 01:14 EST) ("Let's launch Monday Sep 14, 2020. Heres [sic] the tape we want to go out.").

[41] *Id.* at 60 ("can i [sic] email you the credit card? i [sic] want to target these zip codes . . . .").

[42] *See* Gravis Subpoena Response (Mar. 5, 2021) (on File No. EB-TCD-21-00032652); *see also* Service Agreements (on file in EB-TCD-21-00032652). The dialing platform identified Burkman and Wohl as the individuals responsible for the account from which the calls originated and provided service agreements showing Burkman as the account holder. These service agreements listed Burkman's personal phone number, e-mail, and residential address. Bureau staff confirmed that the address, phone number, and e-mail listed on the service agreements were in fact Burkman's.

[43] *See Burkman Response*, *supra* note 20, at 27-29; *see also id*. at 29 (stating "the existence of a contract between Respondents and the respective dialing platforms—even one that imposes certain constraints on the platforms—does not necessarily mean that Respondents had the power to give 'interim instructions' to the platforms").

[44] *Id.* at 27.

[45] *2015 Declaratory Ruling and Order*, *supra* note 8, at para. 30.

> The Court: My question was whether you, acting alone or with anyone else, prepared that message and caused it to be sent?
>
> Mr. Burkman: Oh, yes, your Honor, yes. That is our call, yes, yes.
>
> The Court: Mr. Wohl, you indicated that you echo all of what Mr. Burkman said. Does that include acknowledgement that you participated in the preparation of the content of the message and its communication to plaintiffs through the entity in California?
>
> Mr. Wohl: Yes, your Honor, as to Mr. Burkman's specific representation, yes, yes.[46]

21. Respondents argue that the statements were not made under oath and Respondents did not have counsel present.[47] Neither of these conditions preclude the Commission from considering these statements in this proceeding. Respondents' statements were not made and are not being used as evidence in a criminal trial, but as just one of several pieces of evidence that together indicate the Respondents took an active part in, and claimed responsibility for, making the robocalls. Respondents made these statements in an open court hearing before a federal judge; the Respondents have not disavowed their veracity.

22. *The Applicable TCPA Prohibitions Apply to the Respondents' Calls.* Respondents argue that the TCPA is inapplicable because the Respondents were not "sellers," and the dialing platforms were not "telemarketers" engaged in telemarketing.[48] While this claim applies to one provision of the TCPA (which prohibits unconsented calls to "any residential telephone line"), the NAL did not allege that Respondents violated that statutory provision. Instead, the NAL alleged that the Respondents violated a separate TCPA provision, which prohibits unconsented to calls to wireless numbers.[49] More specifically, that section of the TCPA prohibits:

> any person . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States.[50]

This statutory prohibition applies to robocalls regardless of whether the calls included telemarketing messages and regardless of the nature of the caller.

23. Respondents also argue that the TCPA was not intended to restrict political calls.[51] We reject the assertion that the TCPA applies only to commercial activities. As the Commission has previously stated, the mere fact that a calling campaign is political in nature does not protect the caller from liability under Commission rules.[52] "The placement of illegal robocalls causes consumers

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[46] *See National Coalition on Black Civic Participation et al. v. Wohl et al.*, No. 1:2020cv08668, ECF No. 53 at 12 (S.D.N.Y. Oct. 26, 2020).

[47] *Id*. at 28.

[48] *Burkman Response*, *supra* note 20, at 19.

[49] *Notice*, *supra* note 37, at para 11.

[50] *See* 47 U.S.C. § 227(b)(1)(A)(iii).

[51] *Burkman Response*, *supra* note 20, at 38-39.

[52] *See Warning Political Campaigns and Promoters Against Robocall Abuse*, Enforcement Advisory, Public Notice, 29 FCC Rcd 12657 (EB 2014); Political Campaigns and Promoters are Reminded of Restrictions on Autodialed and Prerecorded Calls, Enforcement Advisory, Public Notice, 27 FCC Rcd 11017 (EB 2012). Political calls made to residential telephone lines may be legal provided certain conditions are met; for this reason the *Notice* concerned only calls made to wireless telephone numbers. *See* 47 U.S.C. § 227(b)(2)(B); 47 CFR § 64.1200(a)(2)-(3).

significant harm, including that such calls are a nuisance and [an] invasion of privacy."[53] There is no indication that Congress intended to exclude calls that contain political content. The Commission has previously found violations of the TCPA in other instances where the calls pertained to political campaigns.[54]

24. *The Commission's Process Was Lawful*. Respondents allege that the Commission acted improperly by not first issuing a citation.[55] Respondents further suggest that this alleged lack of notice is particularly inappropriate because the calls were political calls rather than telemarketing calls. Congress eliminated the obligation to first issue a citation before proposing a fine for TCPA violations in 2019.[56] It did not distinguish between telemarketing and other types of calls when doing so.[57] The Commission followed the procedures set out in the Act and its rules.[58] Respondents acknowledge that the TRACED Act amended subsection 227(b)(4)(A) to remove the citation requirement in subsection 503(b)(5).[59] Further, the TCPA and our implementing rules identify the elements of a robocall violation, including the standard by which a case will be brought. This did not change in 2019 with the amendment to section 227(b)(4)(A). Additionally, the TCPA and Commission rules specify the maximum potential forfeiture and are clear that the penalties apply on a per violation basis. Thus, the TCPA and Commission rules make the violation and potential forfeitures reasonably ascertainable to the public.[60]

25. The Commission used the same methodology in prior robocall cases which further supports the lawfulness of the Commission's process.[61] First, the Bureau was alerted to suspected unlawful robocalls.[62] Then the Bureau issued subpoenas and worked with industry partners and fellow law enforcement agencies to identify the source of the calls. The Bureau reviewed subpoena responses and listened to sample recordings of the calls to verify that they were all prerecorded.[63] Call detail

[53] *See Philip Roesel, dba Wilmington Insurance Quotes*, Forfeiture Order, 33 FCC Rcd 9204, 9217-18, paras. 38-40 (2018) (*Roesel Forfeiture Order*); *see also* Pub. L. No. 102-243 (1991); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992) (*1992 TCPA Order*). *Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Forfeiture Order, 36 FCC Rcd 705, 729, para. 55 (2021) (*Rhodes Forfeiture Order*)

[54] *See, e.g.*, *Moser Forfeiture Order*, *supra* note 13, at 13, para. 24; *Rhodes Forfeiture Order*, 36 Rcd at 729, para.19 (2021); *see also Barr v. Am. Assoc. of Political Consultants, Inc.*, 140 S. Ct. 2335, 2344 (2020) ("[P]laintiffs still may not make political robocalls to cell phones [under the TCPA].").

[55] *See Burkman Response*, *supra* note 20, at vii, 11, 37.

[56] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 3(a)(1), 133 Stat. 3274, 3274-75 (2019).

[57] *Id*.

[58] *See* TRACED Act § 3(a)(1), 133 Stat. at 3274 (amending 47 U.S.C. § 227(b)(4)(A) by adding a sentence stating: "Paragraph (5) of section 503(b) shall not apply in the case of a violation of this subsection.").

[59] *Id.*

[60] *See, e.g.*, *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473-74 (D.C. Cir. 2008) (finding the regulation and other public statements of the FCC provided the "regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform").

[61] The Bureau used the same techniques and investigative processes that it has used in all of its recent robocall enforcement cases. *See e.g.*, *Roesel Forfeiture Order*, *supra* note 54, at 9218-19, para. 40; *Moser Forfeiture Order*, *supra* note 13, at 13430, para. 33; *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 for Forfeiture, 35 FCC Rcd 5948, 5948 (2020).

[62] See E-mail from {[ ]}, to Raul Rojo, Attorney Advisor, Federal Communications Commission (Sept. 24, 2022, 02:19:21 PM EST) (on file in EB-TCD-21-00032652).

[63] *See* Gravis Subpoena Response (Mar. 5, 2021) (on File No. EB-TCD-21-00032652).

records were then examined to identify each call's date, time, and duration. The Bureau analyzed the call detail records with industry-standard, commercially available software and database of known assigned wireless numbers to determine whether they were made to wireless numbers.[64] This process identified 1,141 calls to wireless numbers. Finally, the Bureau spoke to consumers who later provided signed declarations attesting to facts that support the finding of these violations.

26. Respondents fail to provide any arguments or evidence supporting the insufficiency of the Commission's investigation. Respondents say it is "striking that the Commission only successfully contacted *two* individuals who supposedly did not consent . . ." and "[n]otably, the Commission conceded that most of the purported universe of phone numbers" refused to answer the Commission's calls.[65] Yet Respondents do not allege that these facts had any cognizable relevance as to whether they possessed the actual consent of the called parties to receive their robocalls. They never assert that *any* of the consumers who received their robocalls gave them prior express consent as required by law, nor make any claim that the two recipients were atypical in some respect. In fact, Respondents offered no evidence of consent whatsoever. Respondents have the burden to prove that they have consent for each call they make.[66] Meanwhile, the two affected consumers with whom the Bureau spoke stated unequivocally that they did not consent to receive Burkman and Wohl's robocalls, and each consumer provided a supporting declaration attesting to that fact. We find the declarations supplied by the Respondents' victims far more persuasive than the Respondents' non-denial denials of their lack of consent.

27. *The Forfeiture Amount Is Appropriate.* The Commission proposed a forfeiture in accordance with section 503(b) of the Act,[67] section 1.80 of the Commission's rules,[68] and the Commission's *Forfeiture Policy Statement*.[69] When we assess forfeitures, subsection 503(b)(2)(E) of the Act requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[70] Nevertheless, Respondents make several arguments that the *Notice's* proposed forfeiture amount is unlawful, excessive, and arbitrary. Respondents dispute that their conduct was willful or repeated. As a preliminary matter, although Respondents assert that they did not make the calls, they do not question that whoever made the calls did so in violation of the TCPA.

28. Respondents claim that any calls placed to wireless numbers without consent represent only a "mere unintentional and incidental violation,"[71] and that such a "de minimis number cannot reasonably support a $5.1 million penalty under the circumstances, and which wholly undermines any

[64] *See* Call Detail Records (on file in EB-TCD-21-00032652).

[65] *Burkman Response*, *supra* note 20, at 38.

[66] *See Dialing Services Forfeiture Order*, *supra* note 25, at 6200, para. 23 ("[I]t is well-settled that '[c]allers contending that they have the prior express consent to make prerecorded voice or autodialed calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.").

[67] 47 U.S.C. § 503(b).

[68] 47 CFR § 1.80.

[69] *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); *see* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(9); *see also Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 35 FCC Rcd 14879 (EB 2020) (adjusting amounts for inflation) (*Amendment of Section 1.80(b)*).

[70] 47 U.S.C. § 503(b)(2)(E).

[71] *Burkman Response*, *supra* note 20, at vi.

allegation that Respondents' alleged conduct was willful."[72] Respondents misconstrue the meaning of willful.

29. The term "willful" is a defined term in the TCPA and 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 . . . ."[73] The Commission is not required to show that the violations were intentional.[74] Moreover, we find no mitigating evidence that would warrant a reduction in the forfeiture amount. The evidence shows that Respondents had an opportunity to exclude wireless phone numbers from the call lists but declined to do so. The dialing platform sent Burkman a link to a screenshot that included an option to eliminate calls to wireless numbers.[75] Burkman could have selected this option yet did not do so.[76] Even if Respondents did not intend to target wireless phone numbers, they offered no evidence of any effort to prevent calls to wireless numbers.

30. Respondents argue that they met other statutory requirements, such as "identifying the entity commissioning the call, and providing a telephone number . . ." to demonstrate their efforts to comply with the TCPA.[77] We find that these efforts do not negate the illegality of calling wireless numbers without consent and do not warrant a reduction in the forfeiture amount.

31. Respondents note that a substantial portion of the robocalls were "drop off" calls that were not answered, and that many of the answered calls lasted less than 35 seconds.[78] Respondents assert that because only about half of the calls could have been "completed" (according to Respondents' definition of that term), the forfeiture amount is excessive and unreasonable.[79] The Commission has made it clear that a violation occurs whenever a call is made, regardless of whether it is answered.[80]

32. Robocalls cause harm and disruption even if the consumer does not pick up the phone.[81] Robocalls have become so prolific that many consumers now refuse to pick up calls from numbers they

[72] *Id.* ("Moreover, the alleged calls at issue amount to a total of 1.3% of all the robocalls allegedly made, constituting a total of 1,141 calls. This de minimis number cannot reasonably support a $5.1 million penalty under the circumstances, which wholly undermines any allegation that Respondents' alleged conduct was willful.")

[73] 47 U.S.C. §§ 312, 501-503; 47 CFR § 1.80(a); *see also* 47 U.S.C. § 312(f)(1) (The Commission has found that "[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.").

[74] *Compare* 47 U.S.C. § 227(b)(4)(A), *with* 47 U.S.C. § 227(b)(4)(B).

[75] Recording Transcript of Ohio Attorney General's Office (OAG) Investigator John Isaacs (on file in EB-TCD-21-00032652).

[76] *See* Screen Capture of Account Dashboard (on file in EB-TCD-21-00032652).

[77] *Burkman Response*, *supra* note 20, at 8, 32. This statement further supports our finding that Respondents directed (commissioned) the dialing platforms to make the calls.

[78] *See id.* at 39-40.

[79] *Id.* at 39.

[80] *See Rules And Regulations Implementing The Telephone Consumer Protection Act Of 1991 Petition For Declaratory Ruling Of All About The Message, LLC*, Declaratory Ruling, FCC 22-85, 2022 WL 17225556, at *2, note 29 (CGB Nov. 21 2022); *see also Fillichio v. M.R.S. Associates, Inc.*, 2010 WL 4261442, at *3 (S.D. Fla. 2010) (citing *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009) and observing that the prohibition in the TCPA applies to phone calls placed to cellular telephone numbers even if the called party does not answer the calls).

[81] *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, 33 FCC Rcd 1024, 1026, para. 4 (footnote omitted) (2018) (2018 Report and Order) (stating that "even when consumers do not answer [robocalls], they incur the costs of interruption, disruption, lost productivity, and emotional upheaval.")

do not recognize. But even a call that a consumer elects not to answer is no less disruptive; the phone still rings; the consumer's attention is still required; the recipient still must view the incoming call to make a decision whether to answer; and then the recipient is left with the dissatisfaction of having had to deal with yet another untrustworthy call. The harm to telephone networks by illegal robocalls remains no matter what the final outcome of the attempted communication. Illegal robocalls place significant wasteful burdens on the telecommunications infrastructure regardless of whether the call is answered. Voice service providers must spend significant amounts of capital building out capacity for phone calls that end users do not want to receive.

33. Respondents argue that "each day that a violation occurred should be viewed as a *single* violation of the Rule permitting the agency to impose, at most, a $20,731 per day forfeiture penalty."[82] That proposal is inconsistent with the language of the statute and with all prior precedent. In cases involving violations of the TCPA and the Truth in Caller ID Act,[83] the Commission has uniformly treated each unlawful call as a distinct violation.[84] Although Respondents ignore this fact with respect to TCPA violations, they assert that the Truth in Caller ID Act cases are "in no way analogous" because spoofing requires "an intent to violate the statute."[85] We disagree. The salient factor is that each call that is in violation of the TCPA or the Truth in Caller ID Act is a distinct, actionable violation. In addition, assessing a fine based on the number of days, rather than the number of calls, would not adequately account for the harm that large-scale robocalling campaigns cause to consumers, service providers, and others. Technology provides robocallers with the ability to make thousands or millions of calls a day; they would be subject to nominal fines if they confined their calls to a small number of days. Such an interpretation would require upending thirty years of TCPA precedent and more than a decade of Truth in Caller ID precedent.

34. Respondents say it is "noteworthy" that the Commission used Interactive Marketing Solutions (IMS) to determine which calls went to wireless numbers "but does not state that private dialing platforms are mandated to use IMS software . . . ."[86] Respondents seem to argue that they should not be punished because their dialing platforms did not use IMS software to distinguish, and exclude, wireless phone numbers. The Commission's reference to IMS was merely to explain how it conducted its analysis and determined which calls were sent to wireless numbers. Respondents do not contest that this methodology was unfair or led to inaccurate results.[87] And the Commission is not imposing the fine based on failure to use a particular software. But the fact that the dialing platforms *might* have used

[82] *Burkman Response*, *supra* note 20, at 33 ("to the extent that the alleged robocalls were found not to satisfy the TCPA requirements, and in the absence of any citation requirement, each day that a violation occurred should be viewed as a *single* violation of the Rule permitting the agency to impose, at most, a $20,731 per day forfeiture penalty—and not the $5.1 million forfeiture proposed in the NAL.").

[83] 47 U.S.C. § 227(e); *see also* 47 CFR § 64.1604.

[84] *See, e.g.*, *Security First of Alabama*, Notice of Apparently Liability for Forfeiture, 26 FCC Rcd 6490, 6492-93, paras. 7-8 (2011) (proposing a base amount of $4,500 per unlawful call for 16 calls and a higher amount of $10,000 per call for 27 egregious violations, for a total of $342,000 for a total of 43 unlawful calls), forfeiture issued, *Security First of Alabama*, Forfeiture Order, 30 FCC Rcd 2377 (2015) (imposing proposed forfeiture); *1 Home Lending Corp.*, Notice of Apparently Liability for Forfeiture, 21 FCC Rcd 11852, 11856, para. 10 (2006) (proposing a forfeiture of $18,000 for four apparent violations of the TCPA ($4,500 per call), forfeiture issued, *1 Home Lending Corp.*, Forfeiture Order, 24 FCC Rcd 2888 (2009) (imposing proposed forfeiture).

[85] *Burkman Response*, *supra* note 20, at 34. We note that this statement demonstrates Respondents' recognition that the TCPA (unlike the Truth in Caller ID Act) does not require a finding of intent.

[86] *Id.* at 6, 41.

[87] In addition to using IMS, Bureau staff individually checked a sample of numbers, and each proved to be a wireless number. Respondents were provided with the call detail records acquired by the Bureau and had the opportunity to dispute that the calls were made to wireless numbers.

inadequate software (or no software at all) to distinguish wireless numbers does not absolve Respondents of their obligation to comply with the TCPA.[88]

35. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."[89] Section 503(b)(2)(D) authorizes the Commission to assess a forfeiture of up to $20,731 for each violation.[90] In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[91] None of Respondents' arguments persuade us that the forfeiture is excessive or that mitigating factors warrant a reduction.

36. *The Commission Provided The Requisite Notice*. Respondents argue that, because this is the first time that the Commission has relied on the TRACED Act amendment to the TCPA that eliminates the requirement to issue a citation before proposing a monetary forfeiture, the amount is excessive.[92] We disagree. Congress did not direct or authorize the Commission to implement a transition period for eliminating the citation requirement. In any case, the TRACED Act was in effect for more than six months when Respondents made the calls at issue, and the underlying prohibition against prerecorded messages to wireless phones had been in effect for years.[93]

37. Respondents also claim that they had no basis for knowing that the Commission would impose "staggering penalties" and that it is doing so "for the first time in FCC history."[94] But as set forth in the *Notice*, the Commission has on multiple occasions used a base forfeiture of $4,500 for violations of section 227(b).[95] We find those cases analogous and follow them here. Although most of the previous decisions involved a smaller number of calls than the number of apparently unlawful calls that Respondents made, we do not find this is a basis to deviate from the precedent, for several reasons.

38. *First*, the Commission began imposing $4,500 per call forfeitures for unlawful robocalls at least as early as 2006. At that time, the maximum allowable forfeiture was $11,000.[96] The maximum

[88] Respondents also note that some numbers might have been landline numbers that have been ported to wireless phones. *See Burkman Response*, *supra* note 20, at 6. But Respondents did not provide any evidence that this was the case with respect to any of the 1,141 calls at issue.

[89] 47 U.S.C. § 503(b).

[90] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(9); *see also Amendment of Section 1.80(b)*, 35 FCC Rcd 14879 (EB 2020) (adjusting amounts for inflation).

[91] *See* 47 CFR § 1.80(b)(10), note to paragraph (b)(10).

[92] *Burkman Response*, *supra* note 20, at 33.

[93] TRACED Act, *supra* note 4 (the TRACED Act went into effect on December 30, 2019).

[94] *Id.* at 34; *see also, id.* at 35 ("Commission's approach makes it impossible to anticipate the sanction for violating its rules.")

[95] *See e.g.*, *1 Home Lending Corp.*, Notice of Apparently Liability, 21 FCC Rcd 11852 (2006) (proposing a forfeiture of $18,000 for four apparent violations of the TCPA ($4,500 per call)), *1 Home Lending Corp.*, Forfeiture Order, 24 FCC Rcd 2888 (2009) (imposing proposed forfeiture); *Security First of Alabama*, Notice of Apparently Liability, 26 FCC Rcd 6490 (2011) (proposing a range of $4500 to $10,000 per unlawful call, depending on the egregiousness, for a total of $342,000 for a total of 43 unlawful calls), *Security First of Alabama* Forfeiture Order, 30 FCC Rcd 2377 (2015) (imposing proposed forfeiture); *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23648, 23652 (2004) (*Warrior Golf Club Inc. NAL*), *Warrior Custom Golf, Inc.*, Order and Consent Decree, 21 FCC Rcd 6461 (2006) (company paid proposed forfeiture); *see also Travel Club Marketing, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15831, 15835-36 (2011) (recognizing that the Commission had historically imposed a $4,500 base forfeiture per violation, and proposing an upward adjustment to impose the statutory maximum of $16,000 per call, for a total forfeiture of $2,960,000), *Travel Club Marketing, Inc.*, Forfeiture Order, 30 FCC Rcd 8861 (2015) (imposing proposed forfeiture).

[96] *Warrior Golf Club Inc. NAL*, 19 FCC Rcd at 23651.

allowable forfeiture is now $20,731 per unlawful call. Thus, when taking inflation into account, we find that $4,500 per unlawful call is significantly lower in terms of real dollars than the penalties imposed in years past. Accordingly, Respondents' argument that the Commission's proposed penalty in this case is larger than the fines imposed in past cases is incorrect. *Second*, the Commission's proposed penalty reflects our careful consideration of the relevant statutory factors; the Commission's Forfeiture Policy Statement; and careful consideration of Respondents' arguments. We found that a base forfeiture of $4,500 per violation multiplied by the number of violations properly reflects the seriousness and scope of Respondents' unlawful actions. Our forfeiture is consistent with precedent and well-established guidelines. Moreover, the long history of FCC action in this area provided Respondents with fair notice of the potential liability for their violations. Just as Congress's amendment to section 227(b)(4)(A) did not change the standard for determining TCPA violations, it did not change the Commission's method of calculating base for base forfeitures for those violations under section 503 of the Act.[97]

39. *Our Enforcement Action Is Consistent with the First Amendment*. Respondents argue that the robocalls were "political speech protected under the First Amendment, however caustic or undesirable."[98] The content of the calls did not form the basis for any violation alleged in the *Notice*, nor does it factor into this order.[99] The content of the messages is relevant only to the extent that it demonstrates that Respondents were the makers of the calls, and that the calls were previously recorded calls and not live. This is consistent with Supreme Court precedent that has long recognized that the government may introduce "the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."[100]

40. Respondents also allege that the Bureau's collaboration with the Ohio Attorney General (OAG) has tainted this investigation, arguing that the OAG's investigation "involved 'the zealous prosecution of Respondents based on the content of the calls, alone, [which] calls into question the Commission's purportedly content-neutral conclusion.'"[101] The fact that the calls at issue may be the subject of litigation or prosecution elsewhere in part due to their content is irrelevant to the Commission's enforcement action. The Commission frequently collaborates with law enforcement partners and has evidence sharing agreements (or "memoranda of understanding") with many law enforcement organizations.[102] These agreements allow law enforcement agencies to assist each other with obtaining information and evidence relevant to cases of shared interest. But such cooperative efforts do not extend to prosecuting each other's cases. The Commission's action is independent from any criminal case against Respondents filed by the OAG or any other law enforcement agency.

41. Our action finds that Respondents violated the TCPA by making calls to wireless phones without the recipients' prior express consent.[103] As we made clear in the *Notice*, we provided the details

[97] *See* 47 U.S.C. § 227(b)(4).

[98] *Burkman Response*, *supra* note 20, at 5 ("A main point of departure arises from the fact that the alleged robocalls were political speech protected under the First Amendment, however caustic or undesirable. The alleged calls argued for prudential choices and made hyperbolic arguments in favor of one style of voting over another.").

[99] *See Notice*, *supra* note 37, at 12980 (stating that the TCPA applies "regardless of the content of prerecorded messages placed to wireless numbers").

[100] *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993); *see also Street v. New York*, 394 U.S. 576, 594 (1969) (noting that nothing would render a conviction impermissible "merely because an element of the crime was proved by the defendant's words rather than in some other way").

[101] *Burkman Response*, *supra* note 20, at 43.

[102] The Commission currently has evidence sharing agreements with 49 state Attorneys' General. *See* Press Release, Federal Commc'ns Comm'n, *FCC launches formal robocall investigation partnerships with more State Attorneys General* (Mar. 28, 2022), https://www.fcc.gov/document/fcc-launches-new-robocall-investigation-partnerships-more-states.

[103] *See* 47 U.S.C. § 227(b).

of the transcript only for the purposes of identifying the specific calling campaign and determining that they consisted of prerecorded messages.[104] The substantive content of Respondents' messages is not relevant to that determination. The Respondents also point to 47 C.F.R. § 64.1200(a)(3) to argue that "calls are exempt from the statutory prohibition "if not made for a commercial purpose" or, as germane here, if they do "not include or introduce an advertisement or constitute telemarketing."[105] But that provision is inapplicable here; it is an exemption for calls to residential phones, not wireless phones.

42. Respondents argue that consumers who receive these unwanted calls could, "in the great American tradition of disengaging from political activity," simply hang up their phones and file a complaint with the Commission.[106] Even if that were true, it does not undo the violations. As the Commission and courts have made clear, the harm associated with robocall campaigns occurs at the time that call is received and is not erased by the consumer simply hanging up on the robocaller.[107] As the Court in *FCC v. Pacifica* noted, "one may hang up on an indecent phone call, but that option does not give the caller a constitutional immunity or avoid a harm that has already taken place."[108] Moreover, consumers *did* file complaints with the Commission in response to these illegal robocalls. These complaints precipitated in part the investigative action by the Commission.[109]

43. *A Downward Adjustment for Inability to Pay or Lack of Prior Offenses Is Not Warranted.* The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the Respondents submit: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that reflects accurately Respondents' current financial status.[110] Any claim of inability to pay must identify specifically the basis for the claim by reference to the financial documentation submitted.

44. Respondents have failed to provide any tax returns, financial statements, or any other reliable and objective documentation of their inability to pay. Instead, Respondents simply assert that Commission knows "the proposed forfeiture would bankrupt Respondents."[111] However, the corporate bank records of Burkman & Associates which the Commission independently obtained through a subpoena are not sufficient to provide any reliable and objective documentation of an inability to pay. Moreover, inability to pay is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.

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[104] *Notice*, *supra* note 37, at n.1 ("While we provide details of the transcript for purposes of the Background, we reiterate that the content of the calls is not relevant to our determination under the TCPA and the Commission's rules.").

[105] *Burkman Response*, *supra* note 20, at 20.

[106] *Id.* at 4.

[107] *See 2018 Report and Order*, *supra* note 81, at 1026, para. 4.

[108] *FCC v. Pacifica Foundation*, 438 U.S. 726, 749 (1978). In ruling that the Commission has the power to regulate a radio broadcast that is indecent but not obscene, Justice John Paul Stevens wrote for the plurality "To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow. One may hang up on an indecent phone call, but that option does not give the caller a constitutional immunity or avoid a harm that has already taken place. . . . We simply hold that when the Commission finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene." *Id.* at 748-51.

[109] *See* Complaint #4182753; *see also* Complaint #4183268 (on File No. EB-TCD-21-00032652).

[110] *Neal Davis*, Notice of Apparent Liability, 26 FCC Rcd 14375, 14378, para. 11 (EB 2011); *see Greenwood Acres Baptist Church*, Memorandum Opinion and Order, 22 FCC Rcd 1442, 1448, para. 20 (EB 2007) (specifying same).

[111] *Burkman Response*, *supra* note 20, at 6.

45. Respondents argue that the proposed forfeiture is unlawful, excessive, and arbitrary because as the robocalls were "facially lawful" insofar as they complied with the FCC's technical requirements under section § 227(d)(3)(A), had no commercial or pecuniary motive, and represent the first time that the Commission is relying on the TRACED Act's amendments to the TCPA to issue a Notice without first issuing a citation. First, as discussed above, this proceeding concerns violations of section 227(b) of the Act and section 64.1200(a)(1)(iii) of the rules, which are independent of the technical requirements in section 227(d)(3)(A) of the Act and section 64.1200(b) of the rules.

46. Respondents further argue that the proposed forfeiture is unlawful, excessive, and arbitrary because only 1.3 percent of the total number of calls made were to wireless phones, and that this de minimis number cannot reasonably support an approximately $5.1 million penalty under the circumstances. We find these arguments unpersuasive. Each call to a wireless phone represents a single violation of the TCPA for which the Commission proposed a base forfeiture of $4,500. The base forfeiture amount was then multiplied by the number of violations (1,141) for a total forfeiture of $5,134,500. This is consistent with the Commission's prior cases and with the statute. Further, the percentage of calls that were lawful is irrelevant to this enforcement action. We have identified the illegal robocalls and have taken action accordingly.

47. The Commission has on multiple occasions used a base forfeiture of $4,500 for violations of section 227(b). We find those cases analogous and follow them here. Although most of the previous decisions involved a smaller number of calls than the number of apparently unlawful calls that Burkman and Wohl made, we do not think this is a basis to deviate from the precedent, for the following reasons.

48. *First*, the Commission began imposing $4,500 per call forfeitures for unlawful robocalls at least as early as 2006. The Commission noted, in 2006, that the maximum allowable forfeiture at that time was $11,000.[112] In comparison, the maximum allowable forfeiture at the time the Notice was issued was $20,731 per unlawful call.[113] Thus, when taking inflation into account, we find that $4,500 per unlawful call is appropriate. Our proposed forfeiture is thus consistent with precedent.

49. *Second*, after considering the relevant statutory factors and the Commission's Forfeiture Policy Statement, and after careful consideration of Respondents' arguments we concluded, based upon the evidence before us, that the proposed base forfeiture of $4,500 per violation multiplied by the number of violations yielding a total forfeiture of $5,134,500 properly reflects the seriousness, duration, and scope of Respondents' violations.

50. *The Evidence Supports Finding Burkman and Wohl Jointly and Severally Liable with Burkman & Associates.* The evidence shows that Burkman, Wohl, and Burkman & Associates were jointly and severally involved in making the robocalls at issue. Respondents do not challenge the Bureau's personal liability analysis. As discussed in the *Notice*,[114] Burkman acknowledged that he prepared the messages and caused them to be sent.[115] E-mail exchanges with the dialing platform further reflect that Burkman had a key role in deciding the content of the messages and the area codes to which the calls would be sent.[116] Burkman's personal wireless phone number was listed as the calling party on the recipients' caller ID. The recorded messages also identified Burkman and Wohl by name. Wohl personally publicly claims to be a co-founder of "Project-1599," which is the moniker given to the

[112] *See Warrior Golf Club Inc. NAL*, *supra* note 95, at 23651.

[113] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(9); *see also* Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 35 FCC Rcd 14879 (EB 2020) (adjusting amounts for inflation).

[114] *Notice*, *supra* note 38.

[115] *See* Preliminary Examination at 65, *Michigan v. Burkman*, No. 20-060911 (Mich. Dist. Ct. Oct. 29, 2020).

[116] *See* E-mail Records (on file in EB-TCD-21-00032652).

robocalling campaign.[117] There is ample evidence that Wohl also played a key role in determining who would receive the robocalls.[118] Wohl acknowledged creating the calls and causing them to be transmitted. Burkman & Associates paid for the dialing platforms that physically dialed the robocalls.[119] Accordingly, the evidence shows that Burkman, Wohl, and Burkman & Associates were jointly and severally involved in making the robocalls at issue and we will hold each liable for a forfeiture of $5,134,500.

51. In sum, we have carefully considered all of Respondents' arguments and find them unconvincing. We therefore uphold the forfeiture and impose a penalty of $5,134,500 for which John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman & Associates LLC shall be jointly and severally liable.

IV. ORDERING CLAUSES

52. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80(b) of the Commission's rules, 47 CFR § 1.80(b), John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman and Associates LLC **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of five million one hundred thirty-four thousand five hundred dollars ($5,134,500), for willful and repeated violations of section 227(b)(1)(A)(iii) of the Act, 47 U.S.C. § 227(b)(1)(A)(iii), and section 64.1200(a)(1)(iii) of the Commission's rules, 47 CFR § 64.1200(a)(1)(iii).

53. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.[120] John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman and Associates LLC shall send electronic notification of payment to Lisa Ford, Enforcement Bureau, Federal Communications Commission, at lisa.ford@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.[121]

54. In order for John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman and Associates LLC to pay the proposed forfeiture, John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman and Associates LLC shall notify Lisa Ford at Lisa.Ford@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[122]

- 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

[117] The recordings themselves refer to Project-1599 as "the civil rights organization founded by Jack Burkman and Jacob Wohl." *See* Robocall Audio File (on file in EB-TCD-21-00032652).

[118] *See* Preliminary Examination at 60, *Michigan v. Burkman*, No. 20-060911 (36th Dist. Oct. 29, 2020).

[119] *See* {[ ]} Subpoena Response (Mar. 5, 2021) (on file in EB-TCD-21-00032652) (including a scanned copy of a check issues to {[ ]} signed by Respondent).

[120] 47 CFR § 1.80.

[121] 47 U.S.C. § 504(a).

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

above and the letters "FORF". In addition, a completed Form 159[123] or printed CORES form[124] 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).[125] 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.

55. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.[126] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

56. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to John M. Burkman and Jacob Alexander Wohl at

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

[124] 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.

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

[126] *See* 47 CFR § 1.1914.

{[[redacted]]}, and J.M. Burkman and Associates LLC at {[[redacted]]}.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

In the Matter of	)	
	)	
Comparative Consideration of 10 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations	))))	NCE MX Group Numbers 59A, 59B, 76, 104, 106, 114, 122, 158, 196, 215

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 2023 **Released: June 5, 2023**

By the Commission:

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I. INTRODUCTION

1. The Commission has before it for comparative consideration and review 10 groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.[1] By this Memorandum Opinion and Order (Order), we perform threshold fair

[1] On November 29, 2021, the Media Bureau (Bureau) issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations,* Public Notice, 36 FCC Rcd
(continued….)

distribution of service analyses and use a point system to tentatively select an application for grant in each group. Petitions to deny the application of any of these tentative selectees must be filed within 30 days of the date of release of this Order.[2]

2. In the majority of groups addressed in this Order, the Bureau or Commission previously resolved the conflicting NCE proposals by applying the comparative procedures codified in Part 73, Subpart K, of the Commission's rules (rules)[3] and tentatively selected applications for grant. These actions now require additional analysis as a result of subsequent filings or events.

II. BACKGROUND

3. The applications addressed in this Order were filed in November 2021, during the most recent filing window for new NCE FM applications.[4] Each application was MX with at least one other application, and the applicants had an opportunity to enter into settlement agreements among themselves to resolve mutual exclusivity.[5] The Bureau and the Commission subsequently resolved nine of the MX groups addressed herein, along with over 161 other MX groups, comprising hundreds of NCE FM applications,[6] by applying the NCE comparative procedures, which include (1) threshold fair distribution criteria for applications proposing to serve different communities,[7] and (2) an NCE point system,[8] which is a simplified, "paper hearing" process for selecting among mutually exclusive NCE applications.[9] The Commission's comparative review of MX applications is based on applicant-provided information. To expedite the licensing of new NCE FM stations, the Bureau and the Commission rely on applicant certifications and documentation and do not independently confirm their accuracy during the review process. Rather, the Bureau and the Commission rely on the petition to deny process to verify the accuracy of the points claimed and certifications.[10]

4. After applying these procedures, the Bureau or Commission tentatively selected

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16452 (MB rel. Nov. 29, 2021) (*NCE MX Public Notice*). Each of the groups analyzed herein was included in the *NCE MX Public Notice.*

[2] *See* 47 CFR § 73.7004(b).

[3] 47 CFR §§ 73.7000 – 73.7005.

[4] *See Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB rel. April 21, 2021). The window was available for FM reserved band (channels 201-220) proposals. *See* 47 CFR § 73.501.

[5] *See NCE MX Public Notice,* 34 FCC Rcd at 16452. The NCE FM applicants had an opportunity to enter into and file settlement agreements and to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the NCE FM window.

[6] *See, e.g., Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-477 (MB May 2, 2022) (*13 Group 307(b) Order)*; *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-61 (Aug. 2, 2022) (*First Comparative Order*).

[7] *See* 47 U.S.C. § 307(b); 47 CFR § 73.7002(a).

[8] *See* 47 CFR § 73.7003 (point system selection procedures).

[9] *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* Report and Order, 15 FCC Rcd 7386 (2000) (*2000 NCE Order)*, *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*2001 NCE MO&O*), *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002). *See also Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Order)* (amending the comparative rules and procedures), *aff'd,* Order on Reconsideration, FCC 20-121, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration).*

[10] *See 2001 NCE MO&O*, 16 FCC Rcd at 5104, para. 87.

applications for grant from each MX group and initiated a 30-day period for filing petitions to deny against the applicants tentatively selected.[11] In this Order, we address several outstanding, unresolved challenges from the November 2021, NCE FM window. The pleadings addressed herein include multiple petitions to deny[12] the tentative selectee applications of prior Commission decisions regarding the subject MX groups. In many of the petitions to deny, a petitioner has challenged the inclusion of claimed points, thus potentially altering the outcome of the particular NCE MX group. Accordingly, the Bureau has referred these groups to the Commission.[13] Although the groups we resolve in this Order involve a broad range of fact patterns, they also involve many common issues arising from our NCE comparative process. We therefore believe that organizing this Order primarily by topic and consolidating these decisions as a single order will provide guidance on the application of many of the NCE comparative criteria.

5. Section III of this Order provides an introductory overview of each NCE comparative criterion. In Section IV we use the point system to analyze one MX group for the first time and re-analyze three MX groups. Section V is devoted to a challenges to our prior award of established local applicant points. Finally, in Section VI we address one challenge to our tie-breaker criteria.

III. GENERAL NCE COMPARATIVE PROCEDURES

6. Given the finite nature of and high demand for spectrum, the Commission cannot grant a construction permit to every qualified NCE applicant. Due to the noncommercial nature of the NCE service, MX[14] applications for new station construction permits are not subject to auction, but are resolved by applying comparative procedures.[15] Specifically, the Commission's comparative analysis of MX NCE applications generally consists of three main components. First, when NCE FM applicants in an MX group propose service to different communities, the Commission performs a threshold fair distribution analysis under section 307(b) of the Communications Act of 1934, as amended (the Act).[16] Second, application conflicts that are not resolved under this "fair distribution" analysis are compared by the Commission under an NCE point system,[17] which is a simplified, "paper hearing" process.[18] Third, if

[11] *See* 47 CFR § 73.7004(b)

[12] In cases involving a petition to deny, the Commission applies a two-step analysis under the public interest standard. The Commission must first determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest. 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*). If the petition meets this first step, the Commission must determine whether "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest. *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

[13] The Commission directed the Bureau to refer only those issues where the exclusion or inclusion of challenged or claimed points could alter the outcome of a particular NCE group, or where a new or novel question exists. *See, e.g., First Comparative Order, supra* note 6, at para.87 (standards for staff evaluation of petitions).

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

[15] *See* note 9, *supra*.

[16] 47 U.S.C. § 307(b) (Section 307(b)). Although the Media Bureau has delegated authority to perform the Section 307(b) analyses, we are performing the Section 307(b) analyses, where applicable herein, for certain groups in conjunction with our point system analyses in order to expedite consideration of these groups. *See Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, n.16 (2007) (*NCE Omnibus*); 47 CFR §§ 0.61 and 0.283.

[17] *See* 47 CFR § 73.7003 (point system selection procedures).

[18] *See* note 9, *supra.*

necessary, the Commission makes a tie-breaker determination, based on applicant-provided data and certifications. Each of these steps is described in greater detail below.[19]

A. 307(b) --Threshold Fair Distribution Study.

7. Section 307(b) states that the Commission must "provide a fair, efficient, and equitable distribution" of broadcast service among the states and communities.[20] In accordance with this directive, the Commission considers the fair distribution of service as a first, or threshold, issue in its NCE FM comparative review process[21] in order to ascertain whether grant of any of the applications would best further the Section 307(b) objective.[22] The first step of the Section 307(b), or fair distribution, analysis, is to determine whether any of the applicants in the MX group is a federally recognized Native American Tribe or Alaska Native Village proposing to serve Tribal Lands[23] and claims the Tribal Priority.[24]

8. If there is no Tribal Applicant in the MX group,[25] the second step in the Section 307(b) analysis is to determine whether any applicant would provide a first or second reserved band channel NCE aural service to a substantial population (the First or Second NCE Service Preference) by comparing population coverage totals.[26] Specifically, during this step, an NCE FM applicant is eligible to receive a fair distribution preference (or Section 307(b) preference)[27] if it would provide a first or second reserved

[19] In advance of the November 2021 filing window, the Commission amended its rules and procedures for filing NCE FM applications and selecting and licensing competing NCE FM applications. *See NCE LPFM Order*, *supra* note 9. The changes were designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens. *See also Media Bureau Announces October 30, 2020, Effective Date of New NCE and LPFM Rules*, Public Notice, 35 FCC Rcd 12694 (Nov. 2, 2020).

[20] 47 U.S.C. § 307(b).

[21] *See* 47 CFR § 73.7002; *2000 NCE Order,* 15 FCC Rcd at 7396 (2000) (concluding that "fair distribution of stations to communities should remain a threshold issue"); *2001 NCE MO&O*, 16 FCC Rcd at 5077 ("when competing FM applications propose to serve different communities, a proposal would be considered best, as a threshold matter, if it would provide service to a significant unserved or underserved population").

[22] *See* 47 U.S.C. § 307(b) ("In considering applications for licenses . . . when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."); 47 CFR § 73.7002(a). Applicants' Form 2100, Schedule 340, Fair Distribution of Service certifications enable the Commission to consider whether service to one community over the other would best achieve the Commission's directive to distribute radio service fairly among communities.

[23] *See* 47 CFR §§ 73.7000, 73.7002(b).

[24] An NCE FM applicant is eligible to receive a fair distribution preference, and ultimately be awarded the construction permit, if it identifies itself as a Tribal Applicant, proposes Tribal Coverage, and proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands (the Tribal Priority). *See* 47 CFR § 73.7000 (defining a "Tribal Applicant" and "Tribal Coverage"); *see also* 47 CFR § 73.7002(b); *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order, 25 FCC Rcd 1583 (2010) (establishing the Section 307(b) Tribal Priority). *Threshold Fair Distribution Analysis of Mutually Exclusive Applications of the Southern California Tribal Chairman's Association and the Foundation for Economic Justice d/b/a/ Center for Economic Justice for Permits to Construct New Noncommercial Educational FM Stations Filed in November 2021 Window*, FCC 22-28, Memorandum Opinion and Order (rel. April 19, 2022).

[25] None of the MX groups addressed in this Order contain a Tribal Applicant. Accordingly, the first step of the Section 307(b) analysis, the Tribal Priority analysis, is inapplicable herein.

[26] *See* 47 CFR § 73.7002(b).

[27] The terms "fair distribution preference" and "Section 307(b) preference" are used interchangeably to refer to the preference given to an MX application that is deemed to substantially further the fair distribution of service goals enunciated in Section 307(b).

band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station's service area, provided that the population served is at least 2,000 people. If only one applicant in an MX group qualifies for the First or Second NCE Service Preference, its "fair distribution" (Section 307(b)) preference is dispositive,[28] and that applicant will be awarded the construction permit.

9. If more than one applicant in the MX group claims a First or Second NCE Service Preference, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant.[29] First service will be preferred over second service.[30] Accordingly, the Commission first examines the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, or no applicant qualifies for a first service preference, the Commission considers combined first and second NCE aural service population totals. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of Section 307(b) eligibility or service totals is eliminated. The process ends when the Commission determines that one applicant is entitled to a Section 307(b) preference, or that either (1) none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or (2) each remaining applicant proposes to serve the same community. Any remaining MX applicants proposing equivalent service overall, or proposing the same community, proceed to a point system analysis.[31]

10. Each applicant claiming a First or Second NCE Service preference must support its fair distribution claim with an exhibit identifying the population residing within the proposed station's 60 dBμ service contour and the number of people that would receive a new first or second NCE aural service.[32] Further, any applicant which receives a decisive Section 307(b) preference is required to construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference was based for a period of four years of on-air operations.[33]

B. Point System Selection Process.

11. The Commission compares mutually exclusive groups of NCE FM applications, which cannot be decided pursuant to the Section 307(b) analysis, under the point system set forth in section

[28] As noted, in the case of an MX group with a Tribal Applicant, an applicant qualifying for a Tribal Priority, however, will prevail over any MX applicant claiming a First or Second NCE Service Preference.

[29] 47 CFR § 73.7002(b).

[30] *Id.*

[31] *See* 47 CFR § 73.7003 (point system selection procedures).

[32] *See id*. § 73.7002(b). Applicants were required to use the most recently available, *i.e.,* 2010 Census, population data. *See Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window,* DA 21-885, 36 FCC Rcd 11458, 11463, n.24 (MB rel. July 23, 2021) (*NCE Filing Procedures Public Notice*); FCC Form 2100, Schedule 340, Instructions for Fair Distribution of Service at 12-14. An applicant's fair distribution showing must be computed as of the time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. *See* 47 CFR § 73.7003(e) and (f)(3); *NCE Filing Procedures Public Notice* at 11468; *2001 NCE MO&O,* 16 FCC Rcd at 5082-83. However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. *See* 47 CFR §§ 1.65 and 73.7003(e).

[33] *See* 47 CFR § 73.7005(b); *see also* 47 CFR § 73.7002(c). During this period, such applicant may make minor modifications to its authorized facilities, provided that "(i) the modification does not downgrade service to the area on which the preference was based, or (ii) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference."). *Id.*

73.7003 of the rules.[34] The NCE point system awards a maximum of seven merit points, based on four distinct criteria, described below.[35] When MX NCE FM applications proceed to a point system analysis, the Commission reviews the applicants' point submissions[36] to compare the MX applications and tentatively select the application with the highest point total from each MX group for grant.[37]

12. First, we award three points to applicants certifying that they have been local and established for at least two years. To qualify for the three points as an "established local applicant"[38] an applicant must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing.[39] To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75% of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.[40] A governmental unit is considered local within its jurisdictional boundaries.[41]

13. If an applicant certifies that it is an "established local applicant" it must submit substantiating documentation with its application to illustrate how it qualifies as local and established.[42] Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members and copies of governing documents requiring a 75% local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.[43] Any applicant awarded localism points in this Order has provided support for its certification. Thus, the specific point system determinations for each MX group that follows only discuss an applicant's documentation if it is insufficient to justify awarding localism points.

14. Second, we award two points for local diversity of ownership if no party to the application holds an attributable interest in any other station or authorized construction permit whose

[34] *See* 47 CFR § 73.7003. Unlike the 307(b) analysis, the point system selection process cannot be performed by the Bureau on delegated authority. *See 2000 NCE Order*, 15 FCC Rcd at 7420.

[35] *See* 47 CFR § 73.7003(b).

[36] Each NCE FM applicant was required to complete the "Point System Factors/Tie Breakers" Section of FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340) in the Bureau's Licensing and Management System (LMS) by the November 9, 2021 filing deadline.

[37] The Commission has reaffirmed its longstanding one-grant policy. *See NCE Order on Reconsideration, supra* note 9. The one-grant policy provides that only one application should be granted out of each mutually exclusive group, while providing the remaining competing applicants the opportunity to file again in the next filing window. *Id*. The Commission will not authorize "secondary grants" in MX NCE FM groups after the initial resolution of the MX applications. A secondary grant process would allow non-winning applicants that are not mutually exclusive with the tentative selectee to proceed to a second round of analysis by the Commission. *Id. See also NCE LPFM Order*, 34 FCC Rcd at 12528, n.68 (reaffirming the established one-grant policy and declining to pursue a secondary application grant practice).

[38] *See* 47 CFR § 73.7000.

[39] *See id.* § 73.7003(b)(1).

[40] A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community. *See 2000 Order*, 15 FCC Rcd at 7410, para. 54.

[41] For example, a state government is considered local throughout the state; a City Board of Education is considered local through the city; a state university is considered local throughout the state.

[42] An applicant claiming points as an established local applicant must also pledge to maintain localism characteristics during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. *See* 47 CFR § 73.7005(c); *see also NCE LPFM Order*, 34 FCC Rcd at 12523, para 8.

[43] *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11465 .

principal community (city grade) contour overlaps that of the applicant's proposed station.[44] To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, a statement that the applicant holds no attributable interests in any nearby radio stations, or a certification that it holds no attributable interests in any broadcast stations.[45] Any applicant awarded diversity of ownership points in this Order has either satisfied this requirement or submitted a divestiture pledge, as detailed below. Thus, the specific point system determinations for each MX group that follows only discuss an applicant's documentation if it is insufficient to justify awarding diversity points.

15. We note that an NCE FM applicant with an overlapping attributable interest, however, can still qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest.[46] The applicant must submit the divestiture pledge with the application by the close of the filing window. We do not require the applicant to divest or resign by the close of the filing window. Rather, if we award that applicant a construction permit based on points, the applicant must complete the actual divestiture or resignation by the time the new NCE FM station commences program test operations.[47]

16. Third, we award two points for certain state-wide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.[48] The state-wide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit. Applicants claiming points as a state-wide network must submit supporting documentation as an application exhibit.[49]

17. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.,* proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are 10% greater than those of the next best area and population proposals, or two points if both are 25% greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.[50] If the best technical proposal does not meet the 10% threshold, no applicant is awarded points under this criterion. In considering this criterion, we have accepted applicants' coverage

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[44] *See* 47 CFR § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. *See* 47 CFR § 73.7000. Interests of certain entities providing more than 33% of the applicant's equity and/or debt are also attributable. *Id.*

[45] *See* Attributable Interests, Other Authorizations, of Schedule 340. An applicant claiming points for diversity of ownership must also pledge to comply with the restrictions on station modifications and acquisitions during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. *See* 47 CFR § 73.7005(c); *see also NCE LPFM Order*, 34 FCC Rcd at 12524, para. 12.

[46] *See NCE LPFM Order*, 34 FCC Rcd at 12525, para. 13 (expanding the Commission's divestiture policy by recognizing full-service station divestiture pledges for comparative purposes and crediting all contingent divestiture pledges that are made and submitted by the close of the filing window).

[47] *Id.*

[48] *See* 47 CFR § 73.7003(b)(3).

[49] *See* Form 2100, Schedule 340 Instructions at page 16 (detailing preferred documentation to support this point claim).

[50] *Id.* § 73.7003(b)(4). *See NCE Omnibus,* 22 FCC Rcd at 6121-22, paras. 50-51. If there is one top applicant in terms of area and population, that applicant will receive one point even if there is no single next best applicant for both factors. The Commission will compare the top applicant's proposed area to the proposed area of the applicant with the next best area proposal and the top applicant's population to the proposed population of the applicant with the next best population proposal.

and population claims.[51]

18. Finally, the Commission tallies the total number of points awarded to each applicant. The applicant with the highest score in a group is designated the "tentative selectee." All other applicants are eliminated.

C. Tie-Breakers.

19. In the event MX applicants are tied with the highest number of points, the tied applicants proceed to a tie-breaker round.[52] The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.[53] The applicant with the fewest attributable authorizations prevails and becomes the tentative selectee. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of pending radio station applications attributable to each applicant.[54] The tentative selectee will be the applicant with the fewest pending new and major change applications in the same service.

20. If a tie remains after the second tie-breaker, applicants are considered under a third and final tie-breaker criterion – prior NCE applications.[55] The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license.[56] If this third factor fails to break the tie, we use time-sharing as the tie-breaker of last resort. Specifically, we designate the remaining tied applicants in the MX group as the tentative selectees and direct the tentative selectees to submit, within 90 days of the release of the Order identifying the tentative selectees, a voluntary time-sharing agreement.[57]

D. Timely Documentation of Comparative Qualifications.

21. The NCE FM application, Schedule 340, is certification-based, but requires applicants to document certain of their claims by submitting supporting information.[58] Applicants must submit timely-filed exhibits supporting their point claims. We will not give credit to certifications which require the

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[51] Our procedures for this November 2021 NCE FM filing window required applicants to measure area in square kilometers and exclude significant areas of water, *e.g.*, oceans and lakes, and measure population using the 2010 Census Block Data available from the Census Bureau. *See* Form 2100, Schedule 340 Instructions at page 16.

[52] *See* 47 CFR § 73.7003(c).

[53] *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations (licenses and construction permits) and any FM translator stations providing non-fill-in service. An applicant may exclude fill-in translators, any translator which the applicant seeks to replace with its applied for full-service NCE FM station, and any station, which it pledges to divest. *See 2001 NCE MO&O*, 16 FCC Rcd at 5102-03, para. 85; *see also* Form 2100, Schedule 340 Instructions at page 17.

[54] *See* 47 CFR § 73.7003(c)(2). When reporting pending applications, applicants were required to include new and major change radio applications, including the subject application and all other applications filed in the window by the November 9, 2021 deadline. Applicants should not have included any requests to participate in an auction filed on Schedule 175 and other applications such as voluntary assignment of license, license renewal, and minor change in existing facilities. *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467.

[55] *See NCE LPFM Order*, 34 FCC Rcd at 12527-28, para. 19; 47 CFR § 73.7003(c)(3).

[56] *Id.* Applicants were required to submit an attachment demonstrating their qualifications under this third tie-breaker criterion.

[57] *See* 47 CFR § 73.7003(c)(4). If the tentative selectees do not agree on a voluntary time sharing arrangement within 90 days, we will impose mandatory time sharing, granting all tentative selectees "equal, concurrent, non-renewable" licenses. 47 CFR § 73.7003(c)(5).

[58] *See 2000 NCE Report and Order*, 15 FCC *Rcd* at 7423, para. 89.

applicant to submit documentation, but which are not supported with any such timely submitted documentation. For example, we reject claims in this Order where the applicant certifies that it qualifies for points as an established local applicant but fails to supply supporting information referred to in the certification. While there is some flexibility in the type of documentation an applicant may provide, an applicant that does not submit timely support cannot have made a valid certification and will not receive the claimed points.[59] Similarly, we will not consider documentation to support a claimed comparative point if it was submitted in an amendment after the November 2021, filing deadline. In such cases, we adjust the points of such applicants downward.

22. Finally, the NCE FM applicant's qualifications for points are initially determined "as of the closing of the filing window" *i.e.,* the November 9, 2021, filing deadline.[60] For example, NCE organizations are considered "established" if they have operated as local entities since November 9, 2019, *i.e.*, for at least two years prior to the November 9, 2021, Application Deadline. These "snap shot" applicant characteristics establish an applicant's maximum points and its maximum position in the event of a tie-breaker. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.[61] In order to prevent gamesmanship, any changes made after the filing deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, we have taken into account any amendments that adversely affect an applicant's point total and comparative position. We have not considered any amendments, filed after the filing deadline, which improve an applicant's comparative position.[62]

IV. POINT SYSTEM ANALYSES

23. This Section contains narrative descriptions of our point system analyses, organized sequentially by assigned group number. NCE MX Group 215 is being considered for the first time. In NCE MX Groups 59B, 158, and 196, the Commission or Bureau previously considered the group and named a tentative selectee, but subsequent filings or events ensued, which now necessitate additional analysis. Unless otherwise noted, every component of the analysis is based on information provided by each of the respective applicants.[63]

24. At the outset, we again note that each group of applicants has had an opportunity to resolve mutual exclusivities by settlement and technical amendment. In addition, we emphasize that applicants were required to report their qualifications as of the date of closing of the filing window.[64] Any changes made thereafter may potentially have diminished, but could not enhance, an applicant's

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[59] *See, e.g., Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window, Memorandum Opinion and Order,* 25 FCC Rcd 5013, 5017, para. 11 (2010) ("applicant submitting no timely documentation at all cannot be found to have made a valid certification").

[60] *See* 47 CFR § 73.7003(e).

[61] *See, e.g., 2001 NCE MO&O*, 16 FCC Rcd at 5082-83, paras. 23-26; *see also id.* at 5083, para. 26 ("Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.").

[62] *See* 47 CFR § 73.7003(e). For example, an applicant may lose claimed points, such as the diversity of ownership points, as a result of acquiring an overlapping station after the November 2021, filing deadline. In contrast, if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.

[63] *See* FCC Form 2100, Schedule 340, Fair Distribution of Service certifications and Point System Factors/Tiebreakers certifications.

[64] *See NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11467-68.

comparative position.

A. NCE MX Group 59B[65]

25. This group consists of six applications to serve different communities in Florida and Georgia. In Florida, Faith and Action Community Outreach, Inc. (Faith) proposes to serve Madison, and Big Bend Heritage Music Association, Inc. (Big Bend) proposes to serve Perry. In Georgia, Elijah Radio (Elijah) proposes to serve Dasher; Georgia Public Telecommunications Commission (GPTC) proposes to serve Pelham; Church Planters of America (Church Planters) proposes to serve Quitman; and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (Bemiss) proposes to serve Valdosta.

26. Group 59B originally included two additional applicants, CSN International (CSN) and Inverse Focus Ministry, Inc. (Inverse). The Bureau initially performed a fair distribution analysis of the eight applications and identified Inverse as the tentative selectee in Group 59B.[66] Inverse and CSN, however, subsequently requested dismissal of their applications.[67] Accordingly, the Bureau conducted a second 307(b) analysis and identified Big Bend as the new tentative selectee of this group.[68] However, Big Bend subsequently filed an amendment to its application in which it revised its population data and certified that it was not eligible for a fair distribution preference.[69] Accordingly, the Bureau performed a third fair distribution analysis and identified Elijah as the new tentative selectee of this group.[70] However, the Bureau subsequently found that it neglected to consider Elijah's previously filed amendment to its application, which reduced its claimed combined first and second NCE service population total.[71] Accordingly, the Bureau rescinded the tentative selection of Elijah's application and conducted a new fair distribution analysis, considering Elijah's revised fair distribution exhibit.[72] The Bureau was unable to designate a new tentative selectee based on the section 307(b) fair distribution analysis, and therefore, referred Elijah and GPTC, the only two applicants claiming a fair distribution preference, to the Commission for a point system analysis.[73]

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[65] Group 59, which originally contained 17 applications, was bifurcated as a result of a technical amendment. The other applications in the MX group were initially evaluated as Group 59A in a previous order and are re-evaluated herein at *infra* paras. 75-79. *See First Comparative Order*, *supra* note 6, at 11, paras. 32-34.

[66] *See 13 Group 307(b) Order, supra* note 6, 4-5, para. 11.

[67] *See* Application File Nos. 0000167809 and 0000167493.

[68] *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 4-5, para. 10 (MB Nov. 9, 2022) (*Five Group Fair Distribution Order*).

[69] *See* Application File No. 0000166291, Fair Distribution of Service Section and Attach. "Perry 210 Amendment Purpose.pdf" (filed Dec. 7, 2022).

[70] *Threshold Fair Distribution Analysis of 1 Group of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 23-59, at 4, para. 10 (MB Jan. 23, 2023).

[71] *See* Application File No. 0000167410 at Attach. "Engineering Exhibits for 767346 Amendment.pdf" (filed Jan. 28, 2022). An applicant's fair distribution showing must be computed as of the time of filing and cannot be enhanced thereafter. *See* 47 CFR § 73.7003(e) and (f)(3). However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. *See* 47 CFR §§ 1.65 and 73.7003(e). Elijah's revised fair distribution exhibit, which the staff inadvertently did not consider, reflects Elijah's diminished position.

[72] *NCE MX Group 59B*, Letter Order, DA 23-23-80 (MB Jan. 27, 2023) (*NCE MX Group 59B Letter*).

[73] *Id.* In the *NCE MX Group 59B Letter*, the Bureau conducted a new fair distribution analysis and found that the fair distribution claims of Elijah and GPTC are comparable. Specifically, Elijah claims to provide combined first and second NCE service to 2,149 people; GPTC claims to provide combined first and second NCE service to 6,971 people. The applicant proposing to provide service to the greatest number of people will only be awarded a

(continued….)

27. GPTC claims three points as an established local applicant. Elijah certifies that it is not entitled to any points under this criterion. Each applicant claims two points for diversity of ownership. Neither applicant claims points as a state-wide network. With respect to technical parameters, Elijah's proposed 60 dBu contour would encompass 479 square kilometers with a population of 16,634. GPTC's proposed 60 dBu contour would encompass 712.7 square kilometers with a population of 19,136. GPTC qualifies for one point as the best technical proposal because it proposes to serve at least 10% more area and population than Elijah. Accordingly, Elijah is credited with two points, and GPTC is credited with a total of six points. GPTC is, therefore, the new tentative selectee in Group 59B.

B. NCE MX Group 158[74]

28. This group consists of eight applications proposing service to different communities in New Mexico and Texas. New Mexico Junior College (NMJC), New Hope Baptist Church – Hobbs (NHBH), City Of Hobbs, New Mexico (CHN), Christian Ministries of the Valley, Inc. (CMVI), and Eastern New Mexico University (ENMU) each proposes to serve Hobbs, New Mexico. In Texas, Christian Television Radio Ministry (CTRM) proposes to serve Andrews; Teleamerica Communications West Palm Beach Corp. (TCWP) proposes to serve Kermit; and Hispanic American Christian Network, Inc. (HACN) proposes to serve Wink. CHN, CMVI, ENMU, and HACN each claim eligibility for a fair distribution preference.[75] NMJC, NHBH, CTRM, and TCWP do not claim a fair distribution preference, and are therefore, each eliminated. HACN claims to provide first NCE service to 3,329 people; CHN to 18,588 people; CMVI to 15,938 people; and ENMU to 20,954 people. HACN is eliminated because CMVI's next best proposal would serve at least 5,000 more people. Because the remaining three applications propose service to the same community, the fair distribution analysis ends, and CHN, CMVI, and ENMU proceed to a point system analysis to determine which will serve the community of Hobbs, New Mexico.

29. CMVI certifies that it is not entitled to any points. CHN and ENMU each claim three points as an established local applicant. ENMU also claims two points for diversity of ownership. ENMU, however, certifies that it has 15 existing authorizations, but did not submit supporting documentation to justify its diversity claim.[76] Accordingly, we do not award diversity of ownership points to ENMU. No applicant claims points as a state-wide network. With respect to technical parameters, CHN's proposed 60 dBu contour would encompass 4,357 square kilometers with a population of 63,446 people. CMVI's proposed 60 dBu contour would encompass 9,594 square kilometers with a population of 81,393. ENMU's proposed 60 dBu contour would encompass 8,047 square kilometers with a population of 80,483. We do not award any points for the best technical proposal because no proposal would serve at least 10% more in both area and population than the others.

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construction permit if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant. *See* 47 CFR § 73.7002(b). The other four applicants in Group 59B did not claim a fair distribution preference, and accordingly, Big Bend, Faith, Church Planters, and Bemiss were each eliminated.

[74] Group 158 was analyzed in a previous point system order, and City of Hobbs, New Mexico (CHN) was designated the tentative selectee. *See First Comparative Order, supra* note 6, at paras.73-74. On September 1, 2022, CHN filed an amendment to withdraw its claim for diversity of ownership points and forfeit its tentative selectee status. *See* File No. 0000167470. We, therefore, re-analyze Group 158 in light of this amendment.

[75] *See* File Nos. 0000167470, 0000166726, 0000166693, and 0000167507, Fair Distribution of Service Section, and associated exhibits. CHN's 60 dBu contour encompasses 63,446 people, and its claimed aggregated first and second NCE service is 28,570 people. CMVI's 60 dBu contour encompasses 81,393 people, and its claimed aggregated first and second NCE service is 46,655. ENMU's 60 dBu contour encompasses 80,483 people, and its claimed aggregated first and second NCE service is 45,637 people. HACN's 60 dBu contour encompasses 19,065 people, and its claimed aggregated first and second NCE service is 11,639 people. Each applicant thus would provide combined first and second NCE service to at least 10% of the population within its 60 dBu contour and to more than 2,000 people.

[76] *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467.

Accordingly, CMVI is not credited with any points; CHN and ENMU are each credited with three points and proceed to the tie breaker analysis.

30. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. ENMU certifies that it has attributable interests in 15 radio authorizations, and CHN certifies that it has no attributable radio interests. We note, however, that CHN neglected to count its LPFM station KHBX-LP, Hobbs, New Mexico or update its count to include its recently granted NCE FM construction permit.[77] After accounting for these authorizations, CHN still prevails based on this first tie-breaker and is the tentative selectee in Group 158.

C. NCE MX Group 196

31. This group consists of two applications proposing service to different communities in Texas. Texas Public Radio (TPR) proposes to serve Gonzales, and Centro Cristiano de Vida Eterna San Antonio (CCVESA) proposes to serve Runge. The group initially included another CCVESA application to serve Shiner (CCVESA-Shiner), and the Bureau previously conducted a fair distribution analysis and identified CCVESA-Shiner as the tentative selectee.[78] The Bureau, however, subsequently rescinded its tentative selection, dismissed the CCVESA-Shiner application,[79] and referred the remaining CCVESA and TPR applications to the Commission for a point system analysis.[80]

32. Neither applicant claims points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership, with TPR's claim based on a pledge to divest KCTI(AM), Gonzales, Texas, and its associated FM translator station K233CZ. With respect to technical parameters, CCVESA's proposed 60 dBu contour would encompass 2,891 square kilometers with a population of 18,675. TPR's proposed 60 dBu contour would encompass 2,016 square kilometers with a population of 17,649. Because neither applicant's proposal would serve at least 10% more area and population than the other, we do not award points for this criterion. Accordingly, CCVESA and TPR are each credited with two points and proceed to the tie-breaker analysis.

33. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CCVESA certifies that it has attributable interests in 10 radio authorizations, and TPR certifies that it has attributable interests in 13 radio authorizations. We note, however, that CCVESA's count is inaccurate because it neglects to include the 13 non-fill-in FM translator stations[81] held by its principal,

[77] *See* File No. 0000167469 (granted March 20, 2023).

[78] *Five Group Fair Distribution Order, supra* note 68, at 5, para. 11.

[79] *See NCE MX Group 196,* Letter, DA 23-60 (January 23, 2023) (*NCE MX Group 196 Letter*). The Bureau found that the CCVESA-Shiner application was defective because CCVESA lacked reasonable site assurance at the time it filed the application.

[80] *Id.* In the *NCE MX Group 196 Letter*, the Bureau conducted a new fair distribution analysis of the CCVESA and TPR applications and found that the applicants' fair distribution claims are comparable. Specifically, CCVESA claims to provide new first NCE service to 3,724 people and combined first and second NCE service to 18,675 people; TPR claims to provide new first NCE service to 4,175 people and combined first and second NCE service to 16,542 people. Because the Bureau was unable to designate a new tentative selectee based on the section 307(b) fair distribution analysis, it referred Group 196 to the Commission.

[81] *See* 47 CFR § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations (licenses and construction permits) and any FM translator stations providing non-fill-in service. An applicant may only exclude fill-in translators, any translator which the applicant seeks to replace with its applied for full-service NCE FM station, and any station, which it pledges to divest.

Martin Guevera.[82] After accounting for this error and adjustment, TPR has fewer attributable radio authorizations, and is therefore, the new tentative selectee in Group 196.

D. NCE MX Group 215

34. This group consists of two applications to serve different communities in the Virgin Islands. Crucian Educational Non Profit Group Inc. (CENPGI) proposes to serve Charlotte Amalie, and Evangelical Megaphone Ministries, Inc. (EMMI) proposes to serve Frederiksted. CENPGI is the only applicant to claim eligibility for a fair distribution preference.[83] CENPGI, however, provides only an attachment that lists the total service area population of 50,216, and a map without a population breakdown to support its claim. Accordingly, we are unable to determine whether CENPGI satisfies the 10% threshold and 2,000-person minimum criteria.[84] Therefore, because no applicant qualifies for a fair distribution preference, the applicants proceed to a points analysis.

35. Neither applicant claims points as an established local applicant or state-wide network. CENPGI and EMMI each claim two points for diversity of ownership. With respect to technical parameters, CENPGI's proposed 60 dBu contour would encompass 73.7 square kilometers with a population of 50,216. EMMI's proposed 60 dBu contour would encompass 211 square kilometers with a population of 50,011. Neither applicant qualifies for any points for the best technical proposal because neither proposes to serve at least 10% more area and population than the other. Accordingly, CENPGI and EMMI are each credited with a total of two points, and proceed to a tie-breaker analysis.

36. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. The applicant with the fewest authorizations prevails. CENPGI certifies that it has an attributable interest in one radio authorization. EMMI certifies that it has no attributable radio authorizations. However, EMMI was granted two new NCE FM construction permits in December 2022.[85] Accordingly, we find that EMMI has two attributable radio authorizations.[86] CENPGI therefore prevails based on this first tie-breaker and is the tentative selectee in Group 215.

V. ESTABLISHED LOCAL APPLICANT CHALLENGES

37. As noted previously, all NCE FM applicant point claims must be readily ascertainable from timely-filed application exhibits.[87] To qualify for the three points as an "established local

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[82] *See* File No. 0000167130, "Center Cristiano de Vida Eterna San Antonio Other Broadcast Interests.pdf." In this exhibit, CCVESA explains that Martin Guevera has an attributable intertest in Centro Cristiano de Vida Eterna (CCVE) and lists 39 licenses held by CCVE. In the tie-breaker section, however, CCVESA only appears to include the 10 full service stations in its count of attributable radio station authorizations. Bureau staff has confirmed that 13 of the listed licenses are for non-fill-in FM translator stations, and therefore, should have been included in CCVESA's count of attributable radio authorizations.

[83] *See* Application File Nos. 0000166670 and 0000166255, Fair Distribution of Service Section, and associated exhibit.

[84] *See NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11462-63.

[85] *See* Application File Nos. 0000166271 and 0000166252. EMMI neglected to amend its application to update its number of attributable authorizations, as required under section 1.65 of the rules. *See* 47 CFR § 1.65; *NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11468-69.

[86] *See 2001 NCE MO&O*, 16 FCC Rcd at 5083, para. 25 ("an applicant with no existing stations at the time of application will benefit from its 'zero' stations in tie breakers only until such time as it receives a first authorization.").

[87] To be considered timely-filed, exhibits must be filed by the close of the filing window. *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467 ("Certifications which require the applicant to submit documentation, but which are not supported with any such timely documentation, will not be credited. . . . The Commission will not consider documentation to support a claimed comparative point if it is submitted in an

(continued….)

applicant," an applicant must demonstrate that it has been local and established in the community to be served continuously for at least two years immediately prior to filing the application.[88] In NCE MX Groups 76, 104, 106, and 114, the tentative selectees did not timely or sufficiently document its claim as an established local applicant. Accordingly, we rescind the three localism points awarded to each tentative selectee.

38. As stated above, changes made after the close of the filing window cannot enhance or improve an applicant's comparative position and point total.[89] If an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points, even if the applicant would have qualified for the point it is seeking at the time it filed the application.[90] In NCE MX Group 122, the tentative selectee initially certified that it did not qualify for either established local applicant or diversity of ownership points. Accordingly, we rescind the three localism points and two points for diversity of ownership awarded to the tentative selectee.

A. NCE MX Group 76

39. *Background.* This group consists of two applications filed by Heritage Baptist Church (HBC) and Sound in Spirit Broadcasting, Inc. (SSBI) to serve the community of Burlington, Iowa.[91] In the *Second Comparative Order*,[92] the Commission determined that because the HBC and SSBI Applications proposed to serve the same community, they would proceed to a point system analysis.[93] The Commission awarded HBC a total of five points — three points as an established local applicant and two points for diversity of ownership.[94] It awarded SSBI a total of three points—two points for diversity of ownership and one point for the best technical proposal.[95] Thus, HBC, the applicant with the most points, was identified as the tentative selectee.[96]

40. SSBI filed a Petition to Deny the HBC Application (SSBI Petition).[97] In the SSBI Petition, SSBI argues that HBC is not entitled to three points as an established local applicant because its claim cannot be ascertained from the localism exhibit in the original HBC Application,[98] which fails to provide a physical address or headquarters location confirming that HBC is within 25 miles of the reference coordinates of the community to be served.[99] Specifically, SSBI asserts that the HBC

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amendment after the Application Deadline."); Instructions to FCC Form 2100, Schedule 340 at 15 ("An applicant claiming points as an established local applicant must place supporting documentation in the applicant's public inspection file and submit to the Commission copies of the documentation.").

[88] 47 CFR §§ 73.7000 and 73.7003(b)(1); *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468.

[89] 47 CFR § 73.7003(e); *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468.

[90] *Id.*

[91] Application File Nos. 0000167422 (HBC Application) and 0000166214 (SSBI Application). HBC amended its application on August 19, 2022 (Amended HBC Application).

[92] *See Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations,* Memorandum Opinion and Order, FCC 22-78, at 14-15, paras. 55-56 (Oct. 25, 2022) (*Second Comparative Order*).

[93] *Id*. at 14, para. 55.

[94] *Id.* at 15, para. 56.

[95] *Id*.

[96] *Id*.

[97] Pleading File No. 0000203828 (filed Nov. 21, 2022).

[98] HBC Application at Attach. "Heritage Baptist Point System Factors.pdf".

[99] SSBI Petition at 4.

Application lists the applicant's address as a post office box,[100] which is insufficient to establish a physical headquarters. Further, although board members' addresses were listed in the application, SSBI asserts that HBC failed to provide any explanation of the officers' length of residence or distance from the Burlington, Iowa, reference coordinates in order to meet the 75% threshold established by section 73.7000 of the Rules.[101] Lastly, SSBI asserts that the Amended HBC Application, filed after the close of the filing window, cannot cure HBC's unsupported established local applicant claim.[102]

41. In the HBC Opposition,[103] HBC argues that it timely filed an exhibit consisting of a screen shot from the Iowa Secretary of State business search showing the establishment date and the address of the registered agent, but inadvertently cropped out the home office section, which lists the same local address as the registered agent.[104] HBC maintains that it amended its original application out of caution to highlight the headquarters address, and to alert Bureau staff to the information that was inadvertently cropped in the original exhibit.[105] HBC also argues that the Bureau should allow minor typographical errors to be rectified, in accordance with a recent NCE MX Group decision.[106]

42. *Discussion.* We find that HBC did not sufficiently document its eligibility for points as an established local applicant in its initial application and was, therefore, improperly awarded points under this criterion. As previously stated, every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.[107] The failure to timely submit the requisite documentation is fatal to a point claim.[108] Prior to the opening of the November filing window, the Commission cautioned applicants that "the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits."[109] The HBC Application exhibit contains an excerpt, without a heading or source, listing a filing date and the address of a registered agent.[110] However, the exhibit lacks a headquarters address, as well as any evidence or statement that the HBC headquarters is within 25 miles of the reference coordinates of the proposed community of license. Likewise, the initial HBC Application failed to provide an address for HBC's headquarters, and the Commission has long held that a post office box cannot serve as headquarters.[111] Lastly, we will not consider the Amended HBC Application's established

[100] HBC Application at Applicant Information.

[101] *Id*. and 47 CFR § 73.7000 (defining "local applicant" to include applicants "having 75% of board members residing within 25 miles of the reference coordinates of the community to be served").

[102] SSBI Petition at 5.

[103] Pleading File No. 0000204575 (filed Nov. 30, 2022).

[104] HBC Opposition at 1.

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

[106] *Id.* at 2-3 and *NCE MX Group 39*, Letter Order, DA 22-874 (MB Aug. 22, 2022) (*MX Group 39 Order*).

[107] *See, e.g., NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11465.

[108] *See, e.g., Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Station filed in the February 2010 Window*, Memorandum Opinion and Order, 30 FCC Rcd 5135, 5144, para. 18 (2015) (*Seven NCE Groups Order*); 47 CFR § 73.7003(b) ("based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed.…").

[109] *NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11467 (advising applicants to review their supporting documents thoroughly before filing).

[110] HBC Application at Attach. "Heritage Baptist Point System Factors.pdf" at 2.

[111] *See Seven NCE Groups Order*, 30 FCC Rcd at 5141-42, para. 17 (finding applicant ineligible for established local applicant points because it provided only a post office box, rather than a primary place of business or primary residence, in its application). Because HBC does not claim that it is eligible for the established local applicant

(continued….)

local applicant exhibit, filed over nine months after the close of the filing window.[112] It is well established that an NCE applicant's qualifications for points are established at the close of the filing window and cannot be enhanced after that time.[113] For these reasons, we find that HBC was not entitled to points as an established local applicant. We, therefore, grant the SSBI Petition.

43. Our finding that HBC should not have been awarded points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the three points awarded to it under the established local applicant criterion, HBC's total points are reduced from five to two. SSBI therefore prevails with a total of three points,[114] and is the new tentative selectee in NCE MX Group 76.

B. NCE MX Group 104.

44. *Background.* This group consists of two applications filed by Johnson County Board of Education (JCBE) and Paintsville Church of Christ (PCC) to serve the community of Paintsville, Kentucky.[115] In the *Second Comparative Order*,[116] the Commission determined that because the JCBE and PCC Applications proposed to serve the same community, they would proceed to a point system analysis.[117]

45. JCBE and PCC were each awarded three localism points and two points for diversity of ownership.[118] Accordingly, each applicant was credited with a total of five points and proceeded to the tie-breaker analysis.[119] Neither applicant prevailed on the first, second, or third (and final) tie-breaker.[120] Accordingly, JCBE and PCC were both named tentative selectees for MX Group 104, and were directed

points based on the residences of its board members, we need not consider SSBI's argument that HBC failed to demonstrate its eligibility based on this factor.

[112] HBC cites the *MX Group 39 Order* in support of its argument that the Bureau should allow typographical application errors to be corrected or amended. As an initial matter, the *MX Group 39 Order* is a Bureau-level decision, and thus is not binding on the Commission. *See Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008). The *MX Group 39 Order* is also inapposite because the Bureau did not accept a post-window amendment of comparative points claim documentation; rather, the applicant amended its application to cure an application deficiency concerning reasonable assurance of site availability, which would have been allowed if the Bureau had dismissed the application. *See MX Group 39 Order* at 5, n.29, *citing* 47 CFR § 73.3522(a)(2); *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984).

[113] *See 2000 NCE Order*, 15 FCC Rcd at 7423 (noting that point system documentation filed at the Commission should be submitted "concurrently with filing"); *NCE LPFM Order,* 34 FCC Rcd at 12522, para. 6 ("We reiterate that the failure to submit documentation establishing local bona fides by the close of the filing window is fatal to an established local applicant point claim."); *NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11467 (explaining that the "Commission will not consider documentation to support a claimed comparative point if it is submitted in an amendment after the Application Deadline").

[114] *See Second Comparative Order, supra* note 92, at 15, para. 56 (awarding SSBI two points for diversity of ownership and one point for the best technical proposal).

[115] *MX Groups Public Notice*, 36 FCC Rcd at Attach. A; *see also* Application File Nos. 0000166282 (JCBE Application) and 0000165543 (PCC Application).

[116] *Second Comparative Order* at 15, paras. 71-73.

[117] *Id*. at 15, para. 71.

[118] *Id*. at 15, para. 72.

[119] *Id*.

[120] *Id*. at 15, para. 73.

to submit a voluntary time-sharing agreement.[121]

46. JCBE and John Jason Bennett each subsequently filed Informal Objections to the PCC Application (JCBE Objection[122] and Bennett Objection,[123] respectively). In the JCBE Objection, JCBE argues that PCC is not entitled to three points as an established local applicant because it failed to submit any required documentation to support its localism claim.[124] The Bennett Objection alleges that the PCC Application is defective and must be dismissed, pursuant to section 73.3513 of the Rules, because it was not signed by an officer of PCC.[125]

47. In the PCC Opposition,[126] PCC alleges that the supporting documentation verifying its localism claim is contained in its 2015 approved application for a new LPFM license (2015 LPFM License Application).[127] PCC alleges that its cross-reference to the 2015 LPFM License Application, along with information contained within the PCC Application, including its street address and addresses of its directors, serve as sufficient documentation to qualify for points as an established local applicant.[128]

48. In the JCBE Reply,[129] JBCE reiterates its argument that the information contained in the PCC Application is insufficient to establish PCC as a local entity.[130] JCBE argues that PCC cannot rely on information contained in the 2015 LPFM License Application, or any of its previously filed applications, to establish its eligibility for localism points.[131]

49. *Discussion*. We find that PCC did not sufficiently document its eligibility for points as an established local applicant and was, therefore, improperly awarded points under this criterion. As previously stated, every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.[132] The failure to timely submit the requisite documentation is fatal to a point claim.[133]

50. The Commission made clear, prior to the opening of the November 2021 filing window, that "the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits."[134] We do not look beyond the four corners of the application.[135] PCC therefore cannot merely rely on information contained in the 2015 LPFM License Application to establish its current eligibility for

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[121] *Id*.

[122] Pleading File No. 0000207579 (filed Jan. 23, 2023).

[123] Pleading File No. 0000210720 (filed Feb. 14, 2023).

[124] JCBE Objection.

[125] Bennett Objection; *see also* 47 CFR § 73.3513. Because we are dismissing the PCC Application on other grounds, we need not address the Bennett Objection's section 73.3513 argument.

[126]Pleading File No. 0000211025 (filed Feb. 19, 2023) (PCC Opposition).

[127] PCC Opposition at 1 (*citing* Application File No. BLL-20151112XQS).

[128] *Id*.

[129] Pleading File No. 0000211462 (filed Feb. 27, 2023) (JCBE Reply).

[130] *Id*. at 1-3.

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

[132] *See, e.g., NCE Procedures Public Notice, supra* note 32.

[133] *See, e.g., Seven NCE Groups Order*, 30 FCC Rcd at 5142, para. 18.

[134] *NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11467 (advising applicants to review their supporting documents thoroughly before filing).

[135] *Seven NCE Groups Order*, 30 FCC Rcd at 5141-42, para. 17 ("We do not look beyond the four corners of the application."); 47 CFR § 73.7003(b) ("based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed ....").

localism points, and there is insufficient information in the four corners of its application to support the conclusion that PCC qualifies as an established local applicant. Specifically, the PCC Application provided nothing more than a post office box as its address,[136] and the Commission has long held that a post office box cannot serve as a headquarters.[137] Similarly, while the PCC Application listed the physical addresses for each of its four board of directors, it failed to provide documentation establishing length of residence of the board members or documentation that 75% of its board members reside within 25 miles of the reference coordinates of the proposed community of license.[138] Accordingly, we find that PCC was not entitled to points as an established local applicant. We, therefore, grant the JCBE Objection.

51. Our finding that PCC should not have been awarded points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the three localism points, PCC's total points are reduced from five to two. Accordingly, JCBE prevails with a total of five points.[139] The JCBE Application is therefore the sole tentative selectee in MX Group 104, and we grant the JCBE Application and dismiss the PCC Application as ordered herein.[140]

C. NCE MX Group 106

52. *Background.* This group consists of two applications filed by Radio Sharon Foundation (RSF) and Horizon Christian Fellowship (HCF) to serve the community of Narragansett Pier, Rhode Island.[141] In the *Third Comparative Order*, the Commission determined that because the RSF and HCF Applications proposed to serve the same community, the two applicants would proceed to a point system analysis.[142] The Commission awarded RSF a total of five points – three points as an established local applicant and two points for diversity of ownership.[143] It awarded HCF a total of three points – two points for diversity of ownership and one point for the best technical proposal.[144] Thus, RSF, the applicant with the most points, was identified as the tentative selectee.[145]

53. HCF filed a Petition to Deny the RSF Application (HCF Petition),[146] arguing that RSF is

[136] PCC Application at Applicant Information.

[137] *See Seven NCE Groups Order*, 30 FCC Rcd at 5141-42, para. 17 (finding applicant ineligible for established local applicant points because it provided only a post office box, rather than a primary place of business or primary residence, in its application).

[138] PCC Application at Parties to the Application.

[139] *See Second Comparative Order, supra* note 92, at 15, para. 72 (awarding JCBE three localism points and two points for diversity of ownership).

[140] *See, e.g., Seven NCE Groups Order*, 30 FCC Rcd at 5153, para. 51 (granting application of time-share tentative selectee and dismissing application of competing time-share tentative selectee where evaluation of tie-breakers resulted in first tentative selectee prevailing).

[141] *See* Application File Nos. 0000167597 (RSF Application) and 0000167259 (HCF Application).

[142] *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 16, para. 57 (Jan. 24, 2023) (*Third Comparative Order*).

[143] *Id.* at 16, para. 58.

[144] *Id.*

[145] *Id.*

[146] Pleading File No. 0000207900 (filed Jan. 25, 2023). Rhode Island Public Radio d/b/a The Public's Radio (TPR) also filed a Petition to Deny the RSF Application (TPR Petition). Pleading File No. 0000208696 (filed Jan. 30, 2023). TPR argues that the RSF Application should be denied because the facilities proposed in the RSF Application would result in prohibited overlap with facilities proposed by TPR in its application for a new NCE FM station in Kingston, Rhode Island (TPR Application), and that the TPR Application is entitled to first come/first (continued….)

not entitled to three points as an established local applicant because RSF listed incorrect addresses for six of its eight directors, making it appear that 75% of its directors lived within 25 miles of Narragansett Pier.[147]

54. In its Opposition to the HCF Petition,[148] RSF acknowledges that it listed incorrect addresses for six of its eight directors on the RSF Application.[149] It asserts that the six directors with incorrect addresses "had a present intention to relocate to the Narragansett area and were actively planning to rent the properties designated therein but familial circumstances caused those board members to abandon those plans."[150] RSF also argues that "[i]t was not our intention to use these addresses to qualify for the 'established local applicant' point[s]" and that it instead intended to qualify for the points per its headquarters located at 400 Reservoir Ave, Suite 3L, Providence, Rhode Island (Reservoir Address).[151] RSF states that the Reservoir Address is within 25 miles of Narragansett Pier, and that its 2019 Rhode Island annual corporate report (2019 Annual Report), which was filed with the RSF Application, shows that the Reservoir Address was its headquarters for the two years immediately prior to filing the RSF Application.[152]

55. In its Reply,[153] HCF argues that RSF's "sudden shift" to claiming localism based on the location of its headquarters instead of its directors' home addresses is an attempt to divert the Commission's attention from RSF's use of incorrect addresses and the real location of its headquarters, which the RSF Application clearly indicates is 25 Woodman St., Providence, Rhode Island (Woodman Address), a location that, being over 25 miles from Narragansett Pier, precludes RSF from established local applicant status based on its headquarters.[154]

56. *Discussion.* We find that RSF did not sufficiently document its eligibility for points as an established local applicant and was, therefore, improperly awarded points under this criterion. As previously stated, every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.[155] The failure to timely submit the requisite documentation is fatal to a point claim.[156]

57. We disagree with RSF's argument that the 2019 Annual Report is sufficient documentation to entitle RSF to three points as an established local applicant. RSF included three Rhode Island annual corporate reports in the RSF Application: (1) the 2019 Annual Report; (2) its 2020 annual

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serve processing, which cuts off the RSF Application. *Id.* at 2; *see* Application File No. 0000161099 (filed Sept. 29, 2021). In its Opposition, RSF does not address the merits of TPR's argument, and instead asserts that the TPR Petition is moot because the TPR Application was dismissed on February 1, 2023, and that dismissal is now final. *See* Pleading File No. 0000210067 at 2 (filed Feb. 2, 2023); *see also Rhode Island Public Radio*, Application File No. 0000161099, Letter Order, Ref. No. 1800B3-JDB (MB Feb. 1, 2023). We agree with RSF that the TPR Petition is moot, and dismiss it as such.

[147] HCF Petition at 2-3.

[148] Pleading File No. 0000210133 (filed Feb. 3, 2023).

[149] *Id*. at 2.

[150] *Id.*

[151] Declaration of Keila Maria Perdomo Belliard, Exh. B to Opposition; Declaration of Quilvio Perdomo, Exh. A to Opposition (Perdomo Declaration).

[152] *See* Perdomo Declaration.

[153] Pleading File No. 0000210590 (filed Feb. 9, 2023).

[154] *Id*. at 3; Engineering Statement of Bob Moore, Exh. B to Reply.

[155] *See e.g., NCE Procedures Public Notice, supra* note 32.

[156] *See*, *e.g., Seven NCE Groups Order*, 30 FCC Rcd at 5142, para. 18.

report (2020 Annual Report); and (3) its 2021 annual report (2021 Annual Report).[157] The 2019 Annual Report lists the Reservoir Address as RSF's principal place of business.[158] However, the 2020 and 2021 Annual Reports list the Woodman Address as its principal place of business.[159] As a result, RSF has not shown that its headquarters was located at the Reservoir Address for the two years immediately prior to filing the RSF Application.[160] In contrast, the documentation provided in the RSF Application indicates that the Woodman Address was RSF's headquarters during this time.[161] In addition, RSF acknowledges that the home addresses of its directors does not entitle it to points as an established local applicant.[162] Accordingly, we find that RSF was not entitled to points as an established local applicant.

58. Our finding that RSF should not have been awarded points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the three localism points, RSF's total points are reduced from five to two. HCF therefore prevails with a total of three points, and is the new tentative selectee in MX Group 106.[163]

59. While we resolve this group based on points, the information in the record suggests that RSF may have violated section 1.17 of the rules and may have engaged in misrepresentation or lack of candor pertaining to its use of incorrect addresses in the RSF Application.[164] The Commission therefore directs the Bureau to investigate this matter, including RSF's character qualifications, both in connection with the RSF Application and RSF's pending assignment application to acquire an FM translator station in Monticello, New York.[165]

D. NCE MX Group 114

60. *Background.* This group consists of two applications filed by Evangelistic Knights of Our Lady, Inc. (EKL) and Full Potential (FP) to serve different communities in Michigan.[166] In the *First Comparative Order*, [167] the Commission determined that the EKL and FP Applications had comparable

[157] RSF Application at Attach. "Las[t] 3 years An[n]ual Reports.pdf" (RSF Annual Reports Attachment).

[158] The RSF Application does not contain any other documentation indicating that the Reservoir Address is RSF's headquarters. *See* RSF Application.

[159] RSF Annual Reports Attachment at 2-3.

[160] *See* 47 CFR §§ 73.7000 and 73.7003(b)(1); *see also NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11463.

[161] *See* RSF Annual Reports Attachment at 2-3. Additionally, RSF filed an annual report for 2022 on August 15, 2022, an annual report for 2023 on December 21, 2022 (2023 Annual Report), and an amended annual report for 2023 on January 25, 2023, which all listed the Woodman Address as RSF's principal place of business. These reports are publicly accessible at the Rhode Island Department of State website. https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSearch.aspx. RSF again amended the 2023 Annual Report on February 5, 2023, to identify the Reservoir Address as its principal place of business. Thus, RSF's principal place of business from 2020 to 2023 was the Woodman Address, and RSF only identified the Reservoir Address as its headquarters after the filing of the HCF Petition.

[162] Opposition at 2.

[163] We note that on May 16, 2023, RSF filed an Informal Objection to the HCF application. *See* Pleading No. 0000214865. We generally do not consider objections at this stage, but rather, review the merits of any objection if/when the subject application becomes accepted for filing. We will review the merits of RSF's objection after the new tentative selectee's application is accepted for filing.

[164] *See* 47 CFR § 1.17.

[165] Application File No. 0000211357 (filed Feb. 24, 2023).

[166] *MX Groups Public Notice*, 36 FCC Rcd at Attach. A; *see also* Application File Nos. 0000167505 (EKL Application) and 0000167777 (FP Application).

[167] *See First Comparative Order, supra* note 6, at 17-18, paras. 57-58.

fair distribution of service claims, and therefore, proceeded to a point system analysis.[168] The Commission awarded EKL a total of five points — three points as an established local applicant and two points for diversity of ownership. It awarded FP a total of three points—two points for diversity of ownership and one point for the best technical proposal.[169] Thus, EKL was awarded the most points and identified as the tentative selectee.[170]

61. Albert Adam David (David) filed an Informal Objection to the EKL Application (David Objection),[171] and FP filed a Petition to Deny the EKL Application (FP Petition).[172] In the David Objection, David argues that EKL is not entitled to three points as an established local applicant because it was incorporated on October 18, 2021, less than two years prior to filing its application.[173] David also argues that EKL provides no documentation to support its claim that it is a continuation of an older entity, Escanaba Knights of Columbus (EKC), founded in 1902, or that EKC satisfies the qualification requirements for an established local applicant.[174] In the FP Petition, FP argues the Commission should rescind EKL's established local applicant points and designate FP as the tentative selectee because it verified and concurs with David's claims that EKL has not provided any documentation to establish a continuous relationship between EKL and EKC.[175] FP also notes that the EKL board members disclosed in the EKL Application do not match those of the EKC officers listed on EKC's website, and the entities have different addresses and telephone numbers.[176]

62. In the EKL Opposition,[177] EKL argues that the David Objection and the FP Petition are procedurally defective because neither David nor FP have established standing to object to the EKL Application, and both pleadings lack either an affidavit or declaration under penalty of perjury.[178] EKL further argues that the incorporation date is not the only evidence or determinative factor of its established local presence in the proposed community.[179] EKL states that its incorporation was not meant "to establish a new and independent entity, but rather to comply with the relatively new FCC emphasis on incorporation as a means of demonstrating government recognition by a state as a nonprofit in good standing."[180] EKL argues that the *LPFM AFR MO&O* presented a challenge for Catholic entities because "many have not incorporated and have little in the way of state recognition of their unique status," but sought incorporation following the release of the *LPFM AFR MO&O* in order to ensure their eligibility for an NCE license.[181] EKL states that it in particular has existed in the community for decades, had not

[168] *Id*. at 17-18, para. 57.

[169] *Id*. at 18, para. 58.

[170] *Id*.

[171] Pleading File No. 0000197765 (filed Aug. 16, 2022).

[172] Pleading File No. 0000199130 (filed Sep. 1, 2022).

[173] David Objection at 1. David provides a screenshot of the website of the State of Michigan Department of Licensing and Regulatory Affairs, which shows that EKL was incorporated on October 18, 2021.

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

[175] FP Petition at 1-2.

[176] *Id*. *See also* K of C Council #640, Officers, https://www.kofc640.org/640-officers (accessed Oct. 25, 2022).

[177] Pleading File No. 0000202208 (filed Oct. 11, 2022) (EKL Opposition).

[178] *Id.* at 1-3.

[179] *Id.* at 4.

[180] *Id*. at 4 (citing *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13398-99, paras. 23-24 (2013) (*LPFM ARF MO&O*)).

[181] EKL Opposition at 4-5.

previously found incorporation necessary, but did so to ensure it was recognized as an eligible nonprofit entity.[182] EKL argues that this desire to incorporate to demonstrate eligibility should not preclude an applicant from claiming that it is also an established local applicant.[183] Finally, EKL states that EKC is not the applicant, and therefore its board's variance from EKL's board is irrelevant.[184]

63. In the FP Reply,[185] FP argues that the EKL Opposition is untimely because it should have been filed by September 14, 2022.[186] FP also argues that it has standing as a mutually exclusive applicant to EKL, and accordingly the Commission should not treat FP's filing as an informal objection.[187] Finally, FP argues EKL's Opposition does not offer any evidence to prove a link between EKL and EKC.[188]

64. *Discussion*. Procedural Issues. Initially, we reject EKL's procedural arguments as grounds for dismissal of the David Objection and the FP Petition. It is well settled that standing is not required to file an informal objection—such as the David Objection.[189] Additionally, as a mutually exclusive applicant with EKL, FP has standing to file a petition to deny.[190] We further reject EKL's argument that the pleadings should be dismissed pursuant to section 1.16 and 1.52 of the rules because they were not verified. The facts set forth in the David Objection and the FP Petition are those of which the Commission may take official notice because they are all set forth in the EKL Application.[191] Additionally, we find that because David and FP filed their respective Objection and Petition using the Commission's Licensing and Management System, which includes the required certifications, the pleadings were properly verified, and therefore, satisfy the requirements of section 1.52.[192] Finally, in the interest of reviewing a complete record, we also reject FP's argument that we should not consider the EKL Opposition because it was not timely filed. We thus consider the arguments raised in the David Objection, the FP Petition, and the EKL Opposition.

65. Established Local Applicant Documentation. We find that EKL did not sufficiently

[182] EKL Opposition at 5.

[183] *Id.* at 5-7. EKL argues that forcing such a choice on Catholic applicants would be a violation of the Religious Freedom Restoration Act of 1993. *See* 47 U.S.C. § 2000bb *et. seq.*

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

[185] Pleading File No. 0000202775 (filed Oct. 21, 2022) (FP Reply).

[186] FP Reply at 1-2

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

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

[189] *See* 47 CFR § 73.3587 (requirements for an informal objection); *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4251, para. 3 (2014).

[190] *The Trustees of Indiana University*, Memorandum Opinion and Order, 8 FCC Rcd 5555, 5557, para. 11 (1993) (mutually exclusive applicant in a proceeding has standing to file a petition to deny tentative selectee's application).

[191] The key facts alleged in the David Objection and FP Petition relate to the specific documentation submitted in the EKL Application to support its claim as an established local applicant, its date of incorporation, and board members. Because this information is either part of the EKL Application and, therefore, publicly available through the Commission's Licensing and Management System, or accessible through either the websites of the State of Michigan Department of Licensing and Regulatory Affairs or the Knights of Columbus, we can and do take official notice of these facts. The absence of supporting affidavits, therefore, is not a procedural defect. *See, e.g., Seven NCE Groups Order*, 30 FCC Rcd at 5143, para. 21 (affidavit not required when petition relies on facts of which official notice may be taken). *See also* 47 U.S.C. § 309(d)(1) ("Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.").

[192] *See, e.g., Windy City Broad., LLC.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-276, at 2 (MB Mar. 15, 2022) (finding that an objection was properly verified when filed using the Commission's Licensing and Management System).

document its eligibility for points as an established local applicant and was, therefore, improperly awarded points under this criterion. Every NCE FM applicant claiming points as an established local applicant must certify and document, at the time it files its application, that it has been local and established for at least two years.[193] The failure to timely submit the requisite documentation is fatal to a point claim.[194] The EKL Application merely contains an exhibit that states that EKL, the "newly incorporated manifestation of the previously unincorporated association, the [EKC], has been established locally in the community for more than a century. The [EKC] were chartered on January 19, 1902. Thus, [EKL] has been established local for nearly 120 years."[195] However, EKL neglected to provide any concrete documentation to verify that EKC was in fact established in 1902,[196] or to establish the link between EKL and ETC and demonstrate that EKL is, as claimed, the "incorporated manifestation" of EKC. There is not sufficient information in the four corners of the application to support the conclusion that EKL qualifies as an established local applicant. Accordingly, we find that EKL was not entitled to points as an established local applicant.[197] We, therefore, grant the David Objection and grant in part, the FP Petition.

66. Our finding that EKL is not entitled to any points under the established local applicant criterion alters the outcome of the point system analysis for this MX Group. Specifically, without the points awarded to it under the established local applicant criterion, EKL's awarded points are reduced from five to two. FP therefore prevails with a total of three points, and is the new tentative selectee in NCE MX Group 114.

E. NCE MX Group 122

67. *Background.* This group consists of two applications filed by Bible Broadcasting Network, Inc. (BBNI) and Grand Forks Bible Study Group (GFBS) to serve the community of Grand Forks, North Dakota.[198] In the *Second Comparative Order*,[199] the Commission determined that because the BBNI and GFBS Applications proposed to serve the same community, they would proceed to a point system analysis.[200] The Commission awarded GFBS a total of five points — three points as an established local applicant and two points for diversity of ownership.[201] It awarded BBNI a total of two points for diversity of ownership.[202] Thus, the Commission identified GFBS as the tentative selectee.[203]

68. BBNI filed a Petition to Deny the GFBS Application (BBNI Petition),[204] arguing that

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[193] *See, e.g., NCE Procedures Public Notice, supra* note 32.

[194] *See, e.g., Seven NCE Groups Order*, 30 FCC Rcd at 5144, para. 18; 47 CFR § 73.7003(b) ("based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed.…").

[195] EKL Application, Ownership Diversity & Established Local Exhibit.

[196] In the EKL Opposition, EKL provides a copy of a charter for EKC which shows that it was established in 1902. Opposition at Exhibit B. Because this document was not provided at the time of filing, we will not consider it.

[197] In light of our finding that EKL failed to provide adequate documentation to support its claim for established local applicant points, we need not address the additional arguments raised in the Opposition.

[198] *See* Application File Nos. 0000167299 (BBNI Application) and 0000167114 (GFBS Application). GFBS amended its application on January 28, 2022 (Amended GFBS Application).

[199] *Second Comparative Order*, *supra* note 92, at 18, paras. 74-75.

[200] *Id*. at 18, para. 74.

[201] *Id.* at para. 75.

[202] *Id*.

[203] *Id*.

[204] Pleading File No. 0000204160 (filed Nov. 22, 2022).

GFBS is not entitled to either established local applicant or diversity of ownership points because it certified that it did not qualify for points under either criterion in the original GFBS Application.[205] BBNI also asserts that the Amended GFBS Application, in which GFBS references exhibits attached to the original GFBS Application, and certifies that it is eligible for localism and diversity points, cannot be considered because it was filed after the close of the filing window, and it enhances GFBS's comparative status.[206] BBNI further cites to a decision in which the Commission rejected an applicant's late-filed amendment because it constituted a prohibited attempt to enhance the applicant's comparative position.[207]

69. In the GFBS Opposition,[208] GFBS acknowledges that its certifications in the original GFBS Application were inconsistent with its exhibits, but argues that it corrected the oversight with the Amended GFBS Application, which did not upgrade its status because it timely filed localism and diversity exhibits in its original application.[209] GFBS further argues that its situation is distinguishable from the decision BBNI cites because there, the applicant made no points showing in its original application, whereas the original GFBS Application included localism and diversity exhibits.[210]

70. In the BBNI Reply,[211] BBNI reiterates that GFBS is not entitled to any points because in the original GFBS Application GFBS certified that it did not qualify for either established local applicant or diversity of ownership points.[212] BBNI maintains that the Amended GFBS Application cannot be considered because it was filed well after the close of the filing window deadline.[213] BBNI also argues that the cases cited in the GFBS Opposition are unpersuasive because none hold that an applicant can enhance its comparative position after the filing deadline.[214]

71. *Discussion.* We find that because GFBS did not certify that it qualified for established local applicant or diversity of ownership points by the close of the filing window, it was improperly awarded points under these criteria. As previously stated, every NCE FM applicant claiming points as an established local applicant or under diversity of ownership must certify, *at the time it files its application*, that it qualifies for those points.[215] GFBS neglected to do this, and therefore, should not have been awarded localism or diversity points.[216] Even if, as GFBS asserts, the exhibits in its original application demonstrate its eligibility for localism and diversity points, GFBS's conflicting certifications preclude reliance upon the exhibits. Moreover, the Commission and Bureau have repeatedly rejected applicant attempts to enhance comparative position with post-filing window amendments.[217] Accordingly, we will

[205] BBNI Petition at 2 and Exh. A.

[206] *Id.* at 2-3 and Exhs. B and C.

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

[208] Pleading File No. 0000204909 (filed Dec. 7, 2022).

[209] GFBS Opposition at 1-4 and Attachs. 1-4.

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

[211] Pleading File No. 0000205628 (filed Dec. 16, 2022).

[212] BBNI Reply at 1-2.

[213] *Id*. at 2.

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

[215] *See NCE Procedures Public Notice, supra* note 32.

[216] GFBS Application at "Point System Factors/Tiebreakers."

[217] *See Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Station Filed in the February 2010 Window*, Memorandum Opinion and Order, 30 FCC Rcd 5161, 5169-70, paras. 26-27 and n.66 (2015) (finding that allowance of late submission of requested information in comparative cases "would 'inevitably lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage'"). *See also Comparative Consideration of 52 Groups of Mutually*

(continued….)

not consider the new localism and diversity certifications in the Amended GFBS Application, filed over two months after the close of the filing window. For these reasons, we find that GFBS was not entitled to established local applicant or diversity of ownership points.[218] We, therefore, grant the BBNI Petition.

72. Our finding that GFBS should not have been awarded localism or diversity points alters the outcome of the point system analysis for this MX Group. Specifically, without the points awarded to GFBS under these criteria, GFBS's awarded points are reduced from five to zero. BBNI therefore prevails with a total of two points, and is the new tentative selectee in NCE MX Group 122.

VI. TIE-BREAKER CHALLENGE

73. As noted earlier, our rules provide for a system of tie-breakers if more than one application receives the same number of points.[219] With regard to applications for NCE radio facilities, the applicant with the fewest existing radio authorizations (licenses and construction permits, commercial and NCE) prevails on the first tie-breaker. The applicant with the fewest pending new and major change radio applications prevails on the second tie-breaker.[220]

74. Additionally, after the close of the filing window, each applicant must continue to maintain the accuracy and completeness of the information in its application and notify the Commission of any substantial changes that may be of decisional significance to the application.[221] Specifically, an NCE FM applicant is required, pursuant to section 1.65 of the rules, to update its number of authorizations within the Tiebreaker Section of its application if/when one of its pending applications is granted.[222] In MX Group 59A, the tentative selectee did not update its number of authorizations to reflect recent grants. Accordingly, we conduct a new tie-breaker analysis based on each applicant's current and accurate number of authorizations.

A. NCE MX Group 59A

75. *Background.* This group consists of seven applications to serve different communities in Florida. Big Bend Heritage Music Association, Inc. (BBH) has two applications in the group, one for Perry (BBH-Perry), and the other for Cross City (BBH-Cross City). The other applicants are: Elijah Radio (ER) and Learning Avenue, Inc. (LAI), each for Live Oak; Florida Educational Radio, Inc. (FER) for Lee; DND Ministries (DND) for Mayo; and Central Baptist Church of Ocala, Inc. (CBCO) for West Lake.[223] In the *First Comparative Order*, the Commission determined that the ER and CBCO

Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window, Memorandum Opinion and Order, 25 FCC Rcd 8793, 8799 (2010) (finding that applicant's post-filing window amendment was a prohibited attempt to enhance, where the amendment claimed, for the first time, eligibility for a fair distribution preference).

[218] *See Comparative Consideration of 37 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the February 2010 and October 2007 Filing Window*, Memorandum Opinion and Order, 26 FCC Rcd 7008, 7044 (2011) (finding that the initial tentative selectee should not have been awarded localism points because it certified "no" to the established local application certification in its initial application, and amended to correct its error after the close of the filling window); *Network of Glory*, Letter Order, 25 FCC Rcd 7311 (MB 2007) (rejecting an amendment that enhanced an applicant's comparative standing although the amendment allegedly served to only correct mistaken data or errors in the initial application).

[219] *See supra* paras. 19-20.

[220] *See* 47 CFR § 73.7003(c)(1),(2).

[221] *See* 47 CFR § 1.65; *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468-69.

[222] *Id.*; *see, e.g., 2001 NCE MO&O,* 16 FCC Rcd at 5083, para. 25.

[223] *See MX Groups Public Notice*, 36 FCC Rcd at Attach. A; *see also* Application File Nos. 0000167035 (ER Application) and 0000166339 (CBCO Application). Group 59, which originally contained 17 applications, was (continued….)

Applications had comparable fair distribution of service claims, and therefore, analyzed ER and CBCO under the point system.[224] The Commission awarded both ER and CBCO a total of two points, each for diversity of ownership, and therefore, proceeded to the tie-breaker analysis.[225] ER prevailed in the first tie-breaker analysis based on its certification that it had an attributable interest in one radio authorization as compared to CBCO's attributable interest in two radio authorizations. Thus, the Commission identified ER as the tentative selectee of Group 59A.[226]

76. CBCO filed an informal objection against the ER Application (CBCO Objection), arguing that ER should have been eliminated under the first tie-breaker analysis.[227] Specifically, CBCO asserts that ER failed to update the ER Application to reflect that four of its pending applications for new NCE FM stations from the 2021 NCE Window had been granted.[228] Additionally, CBCO notes that, as of the date of the CBCO Objection, ER holds an attributable interest in seven radio authorizations, instead of one, as stated in the ER Application.[229] CBCO, therefore, urges the Commission to designate CBCO as the new tentative selectee for Group 59A. ER did not file an opposition to the CBCO Objection.

77. *Discussion.* We find that ER was improperly favored in the first tie-breaker analysis. FCC Form 2100, Schedule 340, requires an applicant to certify the number of attributable interests it holds in broadcast station authorizations "as of the date of filing."[230] At the time ER filed its Application, ER correctly certified that it had attributable interests in one existing broadcast authorization.[231] ER's status under the first tie-breaker, however, changed when it was granted six authorizations prior to its designation as the tentative selectee in the *First Comparative Order*.[232] After the adoption and release of the *First Comparative Order,* ER was granted one additional authorization, resulting in a current total of eight authorizations.[233]

78. With respect to post-filing window changes, the Commission has made clear that an applicant's maximum point eligibility and tie-breaker standing is established as of the close of the filing

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bifurcated as a result of a technical amendment. The other applications in the MX group were initially evaluated as Group 59B in a previous order and are re-evaluated herein. *See 13 Group 307(b) Order, supra* note 6.

[224] *See First Comparative Order, supra* note 6, at 7-8, paras. 32-34. In the *First Comparative* Order, the Commission also eliminated FER, LAI, and BBH-Perry because each did not claim eligibility for a fair distribution preference, eliminated DND because it failed to provide sufficient documentation to support its fair distribution claim, and eliminated BBH-Cross City because ER's next best proposal would serve at least 5,000 more people.

[225] *Id.*

[226] *Id*. at 8, para 34.

[227] Pleading File No. 0000198584 (filed Aug. 29, 2022).

[228] CBCO Objection at 1-2. ER amended its Application on January 28, 2022, and April 5, 2022, prior to the adoption of the *First Comparative Order*, but neglected to reflect the recent grants.

[229] *Id*. at 1.

[230] Form 2100, Schedule 340, "Existing Authorizations."

[231] *See* ER Application. The ER Application detailed ER's attributable interest in FM station WSJL, Bessemer, Alabama.

[232] *See* Application File No. 0000167024 (granted Dec. 22, 2021); Application File No. 0000167036 (granted Jan. 11, 2022); Application File No. 0000166790 (granted Jan. 20, 2022); Application File No. 0000167023 (granted Feb. 8, 2022); Application File No. 0000167252 (granted Apr. 8, 2022); Application File No. 0000167031 (granted May 10, 2022).

[233] *See* Application File No. 0000167058 (granted Sept. 2, 2022).

window, but can be reduced due to subsequent events.[234] In the context of the tie-breaker process, the Commission stated specifically that:

> Similarly, for tie breakers, the applicant's best position is established at the time of application, but can be reduced. For example, in our primary tie breaker, which selects the applicant with the fewest number of broadcast authorizations at the time of filing, an applicant cannot enhance its position by selling one of its existing stations, but can diminish its position by acquiring an additional station. Thus, an applicant with no existing stations at the time of application will benefit from its "zero" stations in tie breakers *only until such time as it receives a first authorization*. It will be required, pursuant to 47 C.F.R. § 1.65, to update its pending applications and so will not be able to continue claiming zero authorizations, when it has, in fact, already had applications granted in several proceedings, perhaps now surpassing a tied competing applicant in terms of stations authorized.[235]

79. ER was obligated to update its number of authorizations, but failed to do so. We, therefore, grant the CBCO Objection and conduct a new tie-breaker analysis considering ER's correct and current attributable interests in eight radio authorizations, and CBCO's attributable interests in two radio authorizations. CBCO prevails under the first tie-breaker. We therefore rescind our tentative selection of the ER Application and identify the CBCO Application as the new tentative selectee of Group 59A.

VII. NEXT STEPS

80. **Acceptability Studies and Filing of Petitions.** Once the Bureau or Commission identifies a tentative selectee pursuant to the fair distribution analysis or point system, the next step is to consider whether the selectee's application has defects.[236] The Commission has studied the application of each tentative selectee identified herein for application defects. Each tentative selectee identified in this Order and its Appendix appears to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, upon the release of this Order, the tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.[237]

81. Any argument that the tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's qualifications. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's would make its argument in a petition to deny. Likewise a disappointed applicant that believes the tentative selectee should have received fewer points would make such an argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order because the point hearings herein take no final action on any application, and petitions for reconsideration

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[234] *2001 NCE MO&O*, 16 FCC Rcd at 5082-5083. Our rules require applicants to inform us of material changes in their applications after the time of filing. 47 CFR § 1.65. An applicant's maximum points and its standing in a tie breaker can go down, but not up, as a result of changes made after filing. *See also* 47 CFR § 73.7003(e), (f).

[235] *2001 NCE MO&O*, 16 FCC Rcd at 5083 (emphasis added).

[236] If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution analysis. *See* 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

[237] 47 CFR § 73.7004.

do not lie against such interlocutory decisions.[238]

82. **Forthcoming Staff Action.** We direct the Bureau staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest. If the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact, and that a grant of the application would be consistent with the public interest, convenience, and necessity, it shall make the grant on the basis of the fair distribution analyses and point system determinations made herein, dismiss all competing applications, deny any petition to deny, and issue a concise statement of the reasons for denying such petition and disposing of all substantial issues raised by the petition.[239]

83. With the exception of issues that are novel or require Commission consideration as specified below, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.[240] The staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.[241] In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

84. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision for purposes of administrative or judicial review under section 1.103(b) of our rules with respect to any other group.[242]

VIII. ORDERING CLAUSES

85. Accordingly, IT IS ORDERED, that each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, subsequent petitions for reconsideration and reconsideration by the Commission or Bureau on its own motion, applications for review and review on the Commission's own motion, and

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[238] *See NCE Order on Reconsideration,* 35 FCC Rcd 10180, para. 13 ("A tentative selection is not final until the entire administrative process of resolving petitions to deny, and any subsequent pleadings, is complete"); 47 CFR § 1.106 (a)(1). *See also Patrick J. Vaughn, Esq.,* Letter, 22 FCC Rcd 11165 (MB 2007).

[239] 47 U.S.C. § 309(d).

[240] *See, e.g., Central Florida Educational Foundation, Inc.,* Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

[241] *See generally NCE Omnibus,* 22 FCC Rcd at 6162, n.230 (2007) ("If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau's delegated authority. See 47 C.F.R. §§ 0.61(h), 0.283.").

[242] *See* 47 CFR § 1.103(b).

appeals.[243] If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

86. **NCE MX GROUP 59B.** Accordingly, IT IS ORDERED, That the Application filed by Georgia Public Telecommunications Commission (Application File No. 0000167018), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Pelham, Georgia, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive applications of Big Bend Heritage Music Association, Inc. (Application File No. 0000166291), Elijah Radio (Application File No. 0000167410), Faith and Action Community Outreach, Inc. (Application File No. 0000165985), Church Planters of America (Application File No. 0000167096), and Bemiss Road Baptist Church and Lowndes County Christian Academy Inc. (Application File No. 0000167233), and TO GRANT the application of Georgia Public Telecommunications Commission (Application File No. 0000167018), CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

87. **NCE MX GROUP 158.** Accordingly, IT IS ORDERED, that the Application filed by City of Hobbs, New Mexico (File No. 167470) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Hobbs, New Mexico, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive applications of New Mexico Junior College (File No. 167689), New Hope Baptist Church – Hobbs (File No. 167507), Christian Ministries of the Valley, Inc. (File No. 166726), Eastern New Mexico University (File No. 166693), Christian Television Radio Ministry (File No. 167642), Teleamerica Communications West Palm Beach Corp. (File No. 167808), and Hispanic American Christian Network, Inc. (File No. 167156), and TO GRANT the application of) City of Hobbs, New Mexico (File No. 167470) 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 also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

88. **NCE MX GROUP 196.** Accordingly, IT IS ORDERED, that the Application filed by Texas Public Radio (File No. 166683) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Gonzales, Texas, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to

[243] *See* 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.113, 1.115, 1.117 73.7004. In cases that involve separate mutually exclusive groups, but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. *See, e.g.,* FED. R. APP. P. 3(b).

deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Centro Cristiano de Vida Eterna San Antonio (File No. 167130) and TO GRANT the application of Texas Public Radio (File No. 166683) 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, Texas Public Radio must surrender or otherwise divest itself of its licenses for KCTI(AM), Gonzales, Texas, and FM translator station K233CZ, Gonzales, Texas, prior to commencement of program tests of the full service NCE FM station.

89. **NCE MX GROUP 215.** Accordingly, IT IS ORDERED, that the Application filed by Crucian Educational Non Profit Group Inc. (Application File No. 0000166670) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Charlotte Amalie, Virgin Islands, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Evangelical Megaphone Ministries, Inc. (Application File No. 0000166255), and TO GRANT the application of Crucian Educational Non Profit Group Inc. (Application File No. 0000166670) 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.

90. **NCE MX GROUP 76.** Accordingly, IT IS ORDERED, that the Petition to Deny, filed on November 21, 2022, by Sound in Spirit Broadcasting, Inc. (Pleading File No. 0000203828), IS GRANTED. IT IS FURTHER ORDERED, that the tentative selection of the application of Heritage Baptist Church (Application File No. 0000167422) for a construction permit for a NCE FM station in Burlington, Iowa, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Sound in Spirit Broadcasting, Inc. (File No. 0000166214), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Burlington, Iowa, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Heritage Baptist Church (Application File No. 0000167422) and TO GRANT the application of Sound in Spirit Broadcasting, Inc. (Application File No. 0000166214) 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.

91. **NCE MX GROUP 104.** Accordingly, IT IS ORDERED, that the Informal Objection, filed on January 23, 2023, by Johnson County Board of Education (Pleading File No. 0000207579), IS GRANTED. IT IS FURTHER ORDERED that the Informal Objection, filed on February 14, 2023, by John Jason Bennett (Pleading File No. 0000210720), IS DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the tentative selection of the application of Paintsville Church of Christ (Application File No. 0000165543) for a construction permit for a NCE FM station in Paintsville, Kentucky IS

RESCINDED, and the application is DISMISSED. IT IS FURTHER ORDERED, that the Application filed by Johnson County Board of Education (Application File No. 0000166282) 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.

92. **NCE MX GROUP 106**. Accordingly, IT IS ORDERED, that the Petition to Deny, filed on January 25, 2023, by Horizon Christian Fellowship (Pleading File No. 0000207900), IS GRANTED IN PART. IT IS FURTHER ORDERED that the Petition to Deny, filed on January 30, 2023, by Rhode Island Public Radio d/b/a The Public's Radio (Pleading File No. 0000208696), IS DISMISSED AS MOOT. IT IS FURTHER ORDERED, that the tentative selection of the application of Radio Sharon Foundation (Application File No. 0000167597) for a construction permit for a NCE FM station in Narragansett Pier, Rhode Island, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Horizon Christian Fellowship (Application File No. 0000167259), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Narragansett Pier, Rhode Island, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Radio Sharon Foundation (Application File No. 0000167597) and TO GRANT the application of Horizon Christian Fellowship (Application File No. 0000167259) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions. IT IS FURTHER ORDERED that the Media Bureau, in connection with the RSF Application and RSF's pending assignment application to acquire an FM translator station in Monticello, New York, Application File No. 0000211357 (filed Feb. 24, 2023), shall investigate RSF's use of incorrect addresses in the RSF Application, whether RSF violated section 1.17 of the rules, whether RSF engaged in misrepresentation or lack of candor, and whether RSF has the requisite character to be a Commission licensee.

93. **NCE MX GROUP 114.** Accordingly, IT IS ORDERED, that the Informal Objection, filed on August 16, 2022, by Albert Adam David (Pleading File No. 0000197765), IS GRANTED. IT IS FURTHER ORDERED that the Petition to Deny, filed on September 1, 2022, by Full Potential (Pleading File No. 0000199130), IS GRANTED IN PART and DENIED IN PART. IT IS FURTHER ORDERED, that the tentative selection of the application of Evangelistic Knights of Our Lady, Inc. (Application File No. 0000167505) for a construction permit for a NCE FM station in Escanaba, Michigan, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Full Potential (Application File No. 0000167777) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Wells, Michigan, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Evangelistic Knights of Our Lady, Inc. (Application File No. 0000167505) and TO GRANT the application of Full Potential (Application File No. 0000167777) 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.

94. **NCE MX GROUP 122.** Accordingly, IT IS ORDERED, that the Petition to Deny, filed on November 22, 2022, by Bible Broadcasting Network, Inc. (Pleading File No. 0000204160), IS GRANTED. IT IS FURTHER ORDERED, that the tentative selection of the application of Grand Forks Bible Study Group (File No. 0000167114) for a construction permit for a NCE FM station in Grand Forks, North Dakota, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Bible Broadcasting Network, Inc. (Application File No. 0000167299), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Grand Forks, North Dakota, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive application of Grand Forks Bible Study Group (Application File No. 0000167114) and TO GRANT the application of Bible Broadcasting Network, Inc. (Application File No. 0000167299) 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.

95. **NCE MX GROUP 59A.** Accordingly, IT IS ORDERED, that the Informal Objection, filed on August 29, 2022, by Central Baptist Church of Ocala, Inc. (Pleading File No. 0000198584), IS GRANTED. IT IS FURTHER ORDERED, that the tentative selection of the application of Elijah Radio (Application File No. 0000167035) for a construction permit for a NCE FM station in Live Oak, Florida, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Central Baptist Church of Ocala, Inc. (Application File No. 0000166339), is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in West Lake, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we intend, by public notice, TO DISMISS the mutually exclusive applications of Florida Educational Radio, Inc. (Application File No. 0000167677), Learning Avenue, Inc. (Application File No. 0000167472), DND Ministries (Application File No. 0000167338), Big Bend Heritage Music Association, Inc. (Application File Nos. 0000166293 and 0000166684), and Elijah Radio (Application File No. 0000167035) and TO GRANT the application of Central Baptist Church of Ocala, Inc. (Application File No. 0000166339) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and also provides that an applicant receiving a Section 307(b) preference that is decisive over another applicant must operate technical facilities substantially as proposed for a period of four years of on-air operations.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Noncommercial Educational Groups

*If applicant's claim differs from points awarded, claimed points appear first followed by (awarded points) e.g. 2(0) means that the applicant claimed 2 but received 0 points.

MX GROUP	FILE NO.	CITY	ST	APPLICANT NAME	307(B) STUDY			POINT SYSTEM ANALYSIS							TIE BREAKERS			
					307(b) Eligibility	1st Service	1st + 2nd Service	Established Local Applicant	Diversity Ownership	State Network	Area Sq Km	Population Served	Best Technical Proposal	Total Points	1st Tie Breaker (Auths)	2nd Tie Breaker (Apps)	3rd Tie Breaker (Prior NCE Apps)	Established Date
59A	167035	Live Oak	FL	Elijah Radio	YES	6,656	34,656	0	2	0	2,863	51,317	0	2	1(8)	N/A	N/A	N/A
59A	167677	Lee	FL	Florida Educational Radio, Inc.	YES	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59A	167472	Live Oak	FL	Learning Avenue, Inc.	YES	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59A	167338	Mayo	FL	D N D Ministries	Y(NO)	No doc.	No doc.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59A	166293	Perry	FL	Big Bend Heritage Music Association, Inc.	YES	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59A	166684	Cross City	FL	Big Bend Heritage Music Association, Inc.	YES	2,131	6,910	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59A	**166339**	**West Lake**	**FL**	**Central Baptist Church Of Ocala Inc.**	YES	7,471	34,379	0	2	0	2,665	41,746	0	2	2	N/A	N/A	N/A
59B	165985	Madison	FL	Faith And Action Community Outreach, Inc.	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59B	166291	Perry	FL	Big Bend Heritage Music Association, Inc	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59B	167410	Dasher	GA	Elijah Radio	YES	N/A	2,149	0	2	0	479	16,634	0	2	N/A	N/A	N/A	N/A
59B	**167018**	**Pelham**	**GA**	**Georgia Public Telecommunications Commission**	YES	N/A	6,971	3	2	0	712.7	19,136	1	6	N/A	N/A	N/A	N/A
59B	167096	Quitman	GA	Church Planters Of America	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
59B	167233	Valdosta	GA	Bemiss Road Baptist Church And Lowndes County Christian Academy Inc	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
76	167422	Burlington	IA	Heritage Baptist Church	N/A	N/A	N/A	3(0)	2	0	1,509	52,795	0	2	N/A	N/A	N/A	N/A
76	**166214**	**Burlington**	**IA**	**Sound In Spirit Broadcasting, Inc.**	N/A	N/A	N/A	0	2	0	2,652	59,151	1	3	N/A	N/A	N/A	N/A
104	**166282**	**Paintsville**	**KY**	**Johnson County Board of Education**	N/A	N/A	N/A	3	2	0	902	32,672	0	5	N/A	N/A	N/A	N/A
104	165543	Paintsville	KY	Paintsville Church of Christ	N/A	N/A	N/A	3(0)	2	0	882	35,861	0	2	N/A	N/A	N/A	N/A
106	167597	Narragansett Pier	RI	Radio Sharon Foundation	N/A	N/A	N/A	3(0)	2	0	203	49,310	0	2	N/A	N/A	N/A	N/A
106	**167259**	**Narragansett Pier**	**RI**	**Horizon Christian Fellowship**	N/A	N/A	N/A	0	2	0	976	59,822	1	3	N/A	N/A	N/A	N/A
114	167505	Escanaba	MI	Evangelistic Knights Of Our Lady, Inc.	YES	NO	4,879	3(0)	2	0	375	27,373	0	2	N/A	N/A	N/A	N/A
114	**167777**	**Wells**	**MI**	**Full Potential**	YES	NO	7,322	0	2	0	1,468	32,663	1	3	N/A	N/A	N/A	N/A
122	**167299**	**Grand Forks**	**ND**	**Bible Broadcasting Network, Inc.**	N/A	N/A	N/A	0	2	0	640	65,840	0	2	N/A	N/A	N/A	N/A
122	167114	Grand Forks	ND	Grand Forks Bible Study Group	N/A	N/A	N/A	3(0)	2(0)	0	233	60,779	0	0	N/A	N/A	N/A	N/A
158	167689	Hobbs	NM	New Mexico Junior College	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
158	167507	Hobbs	NM	New Hope Baptist Church - Hobbs	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
158	**167470**	**Hobbs**	**NM**	**City of Hobbs, NM**	YES	18,588	Hobbs	3	0	0	4,357	63,446	0	3	0(2)	N/A	N/A	N/A
158	166726	Hobbs	NM	Christian Ministries Of The Valley, Inc	YES	15,938	Hobbs	0	0	0	9,594	81,393	0	0	N/A	N/A	N/A	N/A
158	166693	Hobbs	NM	Eastern New Mexico University	YES	20,954	Hobbs	3	2(0)	0	8,047	80,483	0	3	15	N/A	N/A	N/A
158	167642	Andrews	TX	Christian Television Radio Ministry	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
158	167808	Kermit	TX	Teleamerica Communications West Palm Beach Corp.	NO	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
158	167156	Wink	TX	Hispanic American Christian Network, Inc.	YES	3,329	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
196	**166683**	**Gonzales**	**TX**	**Texas Public Radio**	YES	3,724	18,675	0	2	0	2,016	17,649	0	13	N/A	N/A	N/A	N/A

196	167130	Runge	TX	Centro Cristiano De Vida Eterna San Antonio	YES	4,175	16,542	0	2	0	2,891	18,675	0	10(23)	N/A	N/A	N/A	N/A
215	**166670**	**Charlotte Amalie**	**VI**	**Crucian Educational Non Profit Group Inc.**	YES	No doc.	No doc.	0	2	0	73.7	50,216	0	2	1	N/A	N/A	N/A
215	166255	Frederiksted	VI	Evangelical Megaphone Ministries, Inc.	NO	N/A	N/A	0	2	0	211	50,011	0	2	0(2)	N/A	N/A	N/A

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
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	)	File No.: EB-TCD-18-00027781 NAL/Acct. No.: 202032170007 FRN: 0029650744; 0029650785

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 2023 **Released: June 7, 2023**

By the Commission:

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I. INTRODUCTION

1. We deny the Petition for Reconsideration (Petition) filed by 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 (collectively, Rising Eagle)[1] seeking reconsideration of the Forfeiture Order[2] issued by the Federal Communications Commission (the Commission or FCC) finding that Rising Eagle had illegally spoofed caller ID with the intent to defraud, cause harm, and wrongfully obtain something of value in violation of the Truth in Caller ID Act.

2. Upon review of the Petition and the entire record, we find no basis for reconsideration. In general, reconsideration is appropriate only when the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the

[1] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[2] 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, Forfeiture Order, 36 FCC Rcd 6225, 6226, para. 2 (2021) (*Rising Eagle Forfeiture Order*).

petitioner's last opportunity to present such matters.[3] Rising Eagle's Petition fails to present such facts or arguments warranting reconsideration. It argues that the Commission improperly relied upon the content of the prerecorded messages rather than the caller ID number itself to impose the forfeiture; Rising Eagle lacked the intent to defraud; the Commission's application of the Truth in Caller ID Act to Rising Eagle's conduct was impermissibly vague; and the Commission failed to consider all relevant factors when it assessed the proposed forfeiture amount. We do not find merit in any of Rising Eagle's arguments. We find that the Commission properly decided the matters raised and deny Rising Eagle's Petition and affirm the conclusion in the Rising Eagle Forfeiture Order that pursuant to Section 503(b) of the Communications Act of 1934, as amended (the Act) Rising Eagle is liable for a monetary forfeiture of $225,000,000 for willfully and repeatedly violating section 227(e) of the Act and section 64.1604 of the Commission's rules.

II. BACKGROUND

3. *Legal Framework.* The Truth in Caller ID Act, codified in section 227(e) of the Act, prohibits "caus[ing] any caller identification service" in connection with any telecommunications service or Internet Protocol-enabled service to "knowingly transmit misleading or inaccurate caller identification [(caller ID)] information with the intent to defraud, cause harm, or wrongfully obtain anything of value"[4]—a practice otherwise known as "spoofing," which on a large scale is often coupled with illegal robocalling activity.[5] In enacting the Telephone Consumer Protection Act (TCPA),[6] Congress determined that unwanted prerecorded voice message calls (a type of robocall) are a greater nuisance and invasion of privacy than live calls and that such calls delivered to wireless phones can be costly.[7] The TCPA and the Commission's implementing rules prohibit prerecorded voice message calls to wireless telephone numbers without subscribers' prior express consent unless made for an emergency purpose[8]—and require inclusion of the telephone number of the entity responsible for initiating the call.[9] The Commission has

[3] *See* 47 CFR § 1.106; *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (EB 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686 (1964), *aff'd sub. Nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)); *see also Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (EB 2012) (articulating the standard of review for Petitions for Reconsideration).

[4] 47 U.S.C. § 227(e)(1); *see also* 47 CFR § 64.1604. There are exceptions for investigative, protective, or intelligence activities, but those exceptions do not apply here.

[5] S. Rep. No. 116-41 at 2 (2019).

[6] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227) (TCPA).

[7] *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*). Similarly, courts have routinely agreed that robocalls are an invasion of privacy, an injury in fact sufficient for Article III jurisdiction. *LaVigne v. First Community Bancshares, Inc.*, 215 F. Supp. 3d 1138, 1146-47 (D.N.M. 2016). *See also Mims v. Arrow Financial Services, LLC*, 565 U.S. 368, 372 (2012) (recognizing Congress's finding that robocalls are an invasion of privacy); *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (recognizing that preserving the sanctity of the home is an important value).

[8] 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii); *see also Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335 (2020) (invalidating the debt collection exception in 47 U.S.C. § 227(b)(1)(A)(iii)). The Commission has granted exemptions to the prior-express-consent requirement, relying on the exemption authority Congress provided in 47 U.S.C. § 227(b)(2)(C).

[9] 47 U.S.C. § 227(d)(3)(A); 47 CFR § 64.1200(b)(2).

found that spoofing, when employed in an unlawful robocalling campaign, can indicate an intent to cause harm.[10]

4. *Factual Background*. In September 2018, the USTelecom Industry Traceback Group (Traceback Group) informed the FCC Enforcement Bureau (Bureau) that it had traceback information for millions of robocalls containing prerecorded messages offering health insurance.[11] The Traceback Group determined that approximately 23.6 million health insurance robocalls were crossing the networks of the four largest wireless carriers each day.[12] Moreover, the Traceback Group's experts found indications that many or possibly all of the offending robocalls contained false caller ID information.[13] The Bureau launched an investigation to determine who was responsible for the apparently unlawful spoofed robocalls affecting consumers.

5. The Bureau uncovered evidence that many of the robocalls included false or misleading statements about the identity of the caller and the products being offered.[14] Rising Eagle made spoofed robocalls on behalf of clients that sold short-term, limited-duration health insurance plans.[15] Many of the robocalls contained the following message:

> Are you looking for affordable health insurance with benefits from a company you know? Policies have all been reduced nationwide such as Cigna, Blue Cross, Aetna, and United[,] just a quick phone call away. Press 3 to get connected to a licensed agent or press 7 to be added to the Do Not Call list.[16]

The prerecorded messages purported to offer health insurance plans from well-known health insurance companies such as Aetna, Blue Cross Blue Shield,[17] Cigna, and UnitedHealth Group.

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[10] *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Forfeiture Order, 33 FCC Rcd 9204, 9218-19, para. 40 (2018) (*Roesel Forfeiture Order*); *Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability, 32 FCC Rcd 5418, 5423, para. 16 (2017) (*Abramovich Notice*).

[11] Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom—The Broadband Association, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Sept. 21, 2018) (on file in EB-TCD-18-00027781). The Traceback Group 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). Traceback is the process of tracing suspected illegal robocalls through multiple voice service provider networks until the originating voice provider or the calling party is identified. USTelecom Industry Traceback Group, Combating Illegal Robocalls at 2-3 (2021), https://tracebacks.org/itg-report/.

[12] USTelecom Subpoena Response (Oct. 4, 2018) (on file in EB-TCD-18-00027781).

[13] *Id.*

[14] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6228, para. 8.

[15] *Id.* at 6227, para. 6.

[16] Nomorobo, *(678) 261-1817 Is a Health Insurance Scam* (Feb. 6, 2019), https://www.nomorobo.com/lookup/678-261-1817. Nomorobo is a call blocking application. Nomorobo, *How it Works*, https://nomorobo.com/#learn (last visited May 22, 2023). Its website contains recordings of various robocalls. The recording cited here has a caller ID associated with Rising Eagle calls transmitted on February 6, 2019. *See* Call Detail Records, *supra* note 19. Rising Eagle does not dispute that it used this recording.

[17] Blue Cross Blue Shield is comprised of 34 independent and locally operated companies. Together these companies form the Blue Cross Blue Shield Association, which owns the intellectual property rights. *The Blue Cross Blue Shield System*, Blue Cross Blue Shield, https://www.bcbs.com/about-us/the-blue-cross-blue-shield-

(continued….)

In fact, the Bureau confirmed that Rising Eagle had no connection to at least two of the insurance companies—Blue Cross Blue Shield and Cigna—and there is no evidence that Rising Eagle was connected with any of the other insurance companies mentioned.[18] If a consumer "press[ed] 3" after hearing the message, the consumer would be transferred to a call center unaffiliated with, and not authorized by, the above-named health insurance companies. The representatives in that call center then would attempt to convince the caller to purchase an insurance product sold by one of Rising Eagle's clients—none of which were the health insurance companies named in the prerecorded messages.

6. Between January 2, 2019 and May 14, 2019, Rising Eagle, under the direction of John Spiller and Jakob Mears, made 1,047,677,198 robocalls to American and Canadian consumers on behalf of its clients.[19] The Bureau reviewed a subset of Rising Eagle's more than one billion robocalls to confirm that they were spoofed. The Bureau determined that Rising Eagle used at least 60 caller IDs assigned to persons other than Rising Eagle or that were unassigned.[20] Rising Eagle used these 60 caller IDs to make 113,190,325 calls. The Bureau verified that at least 150,000 of these calls in fact used one of the 60 spoofed caller IDs[21] and confirmed that Rising Eagle made at least 86,864,456 robocalls to wireless phones as well as 56,635,935 robocalls to numbers listed on the National Do Not Call Registry.[22] Bureau

(Continued from previous page)
system (last visited May 2, 2023). References to Blue Cross Blue Shield in this Memorandum Opinion and Order are to the Blue Cross Blue Shield system as a whole.

[18] Affidavit of Adam Peltzman, Assistant General Counsel, Executive Director, Blue Cross Blue Shield Association at 1 (Apr. 10, 2020) (on file in EB-TCD-18-00027781) (Blue Cross Aff.); Affidavit of Kaitlin Reilly, Legal Compliance Senior Advisor, Cigna Corporation at 1-2 (Feb. 12, 2020) (on file in EB-TCD-18-00027781) (Cigna Aff.).

[19] R Squared Subpoena Response (Aug. 16, 2019) (on file in EB-TCD-18-00027781) (*hereinafter* Call Detail Records). Rising Eagle is a Texas entity. Rising Eagle Capital Group LLC, Certificate of Formation, Office of the Sec'y of State of Tex. (Apr. 9, 2014). The Truth in Caller ID Act prohibits unlawfully spoofed calls to U.S. *and* foreign recipients so long as the caller is located in the United States. 47 U.S.C. § 227(e). Rising Eagle made 2,672,424 robocalls to Canadian consumers; however, the 150,000 robocalls that the Bureau verified only include robocalls made to U.S. consumers.

[20] The Bureau subpoenaed the subscriber information of the caller IDs to determine whether voice service providers had assigned the numbers to Rising Eagle or its clients. *See* 8x8, Inc. (Dec. 4, 2019) (on file in EB-TCD-18-00027781); AT&T Corp. (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Armstrong Telecomms., Inc. (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Big River Tel. Co. (Dec. 4, 2019) (on file in EB-TCD-18-00027781); Blitz Telecom Consulting (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Broadvoice, Inc. (July 7, 2020) (on file in EB-TCD-18-00027781); CenturyLink Commc'ns, LLC (Nov. 27, 2019) (on file in EB-TCD-18-00027781); Comcast Phone, LLC (Nov. 19, 2019) (on file in EB-TCD-18-00027781); Connexum, LLC (Dec. 6, 2019) (on file in EB-TCD-18-00027781); Intermedia.net, Inc. (Dec. 2, 2019) (on file in EB-TCD-18-00027781); j2 Cloud Servs., LLC (Dec. 4, 2019) (on file in EB-TCD-18-00027781); Lumos Networks, Inc. (Dec. 4, 2019) (on file in EB-TCD-18-00027781); Momentum Telecom, Inc. (Dec. 10, 2019) (on file in EB-TCD-18-00027781); Pinger, Inc. (Dec. 9, 2019) (on file in EB-TCD-18-00027781); Qwest Corp. (Nov. 21, 2019) (on file in EB-TCD-18-00027781); TPx Commc'ns Co. (Feb. 10, 2020) (on file in EB-TCD-18-00027781); Verizon Commc'ns Inc. (Nov. 21, 2019) (on file in EB-TCD-18-00027781); Vonage Holdings Corp. (Dec. 16, 2019) (on file in EB-TCD-18-00027781); Ymax Commc'ns Corp. (Nov. 21, 2019) (on file in EB-TCD-18-00027781).

[21] The Bureau selected this sample of 150,000 calls by selecting the first 2,500 calls that displayed one of each of the 60 caller IDs. Verified Call Detail Records (on file in EB-TCD-18-00027781) (*hereinafter* Verified Call Detail Records).

[22] Federal Trade Commission, National Do Not Call Registry, https://www.donotcall.gov/. Residential wireless numbers can also be listed on the National Do Not Call Registry. Thus, there may be overlap between the two sets of calls.

staff interviewed 52 of the consumers who received robocalls from Rising Eagle.[23] None of the called consumers whom the Bureau interviewed gave permission—written or otherwise—for the robocalls.[24] Bureau staff listened to a subset of the recorded messages. After reviewing at least portions of nearly 2,000 messages (and in some cases, the entire message), the Bureau determined that the messages did not include the name of Rising Eagle or its clients at the beginning of the prerecorded voice message or a callback telephone number.[25]

7. On June 10, 2020, the Commission adopted a Notice of Apparent Liability (Notice) proposing a $225,000,000 penalty against Rising Eagle for its apparent violations of the Truth in Caller ID Act.[26] Rising Eagle responded to the Notice on August 24, 2020.[27] On March 17, 2021, the Commission adopted the Forfeiture Order imposing a $225,000,000 penalty as proposed in the Notice.[28] On April 19, 2021, Rising Eagle filed a Petition for Reconsideration (Petition).[29]

8. Rising Eagle makes a number of arguments as to why the Forfeiture Order should be reconsidered and rescinded: (1) the Commission has imposed this historic penalty for the content of the prerecorded messages rather than the caller ID information or the reason for alleged caller ID spoofing;[30] (2) there is no adequate showing of Petitioners' intent to defraud or harm the consumers called;[31] (3) the application of the statute to Petitioners' conduct is impermissibly, unconstitutionally vague as applied to the conduct at issue;[32] and (4) the Commission failed to consider all relevant factors it is required to examine when considering whether to reduce a proposed forfeiture.[33] These arguments are considered below.

III. DISCUSSION

9. Section 1.106(p) authorizes the Commission or the relevant bureau to dismiss or deny a petition for reconsideration that is used merely to repeat legal and factual arguments that have been "fully

[23] These 52 examples were those for which the Bureau was able to make contact from a sample selected by contacting the recipients of the lengthiest ten calls made from each of the 60 spoofed caller IDs.

[24] Declaration of {[[redacted]]} (Apr. 8, 2020) (on file in EB-TCD-18-00027781); Declaration of {[[redacted]]} (Apr. 6, 2020) (on file in EB-TCD-18-00027781); Declaration of {[[redacted]]} (Mar. 12, 2020) (on file in EB-TCD-18-00027781); Declaration of {[[redacted]]} (Mar. 10, 2020) (on file in EB-TCD-18-00027781); Declaration of {[[redacted]]} (Mar. 9, 2020) (on file in EB-TCD-18-00027781). Material highlighted and set off by double brackets {[ ]} is redacted from the public version of this document.

[25] The Bureau examined recordings provided by YouMail, Inc., a robocall identification and blocking service. YouMail Subpoena Response (Jan. 3, 2020) (on file in EB-TCD-18-00027781) (*hereinafter* YouMail Response).

[26] *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 for Forfeiture, 35 FCC Rcd 5948, 5948, para. 1 (2020) (*Rising Eagle Notice*).

[27] Rising Eagle, Response to Notice of Apparent Liability (Aug. 24, 2020) (on file in EB-TCD-18-00027781) (*hereinafter* Notice Response).

[28] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6226, para. 2.

[29] Rising Eagle, Petition for Reconsideration (Apr. 19, 2021) (on file at EB-TCD-18-00027781) (*hereinafter* Petition).

[30] *Id.* at 1-4.

[31] *Id.* at 4-10.

[32] *Id.* at 10-13.

[33] *Id.* at 13-18.

considered and rejected by the Commission within the same proceeding[.]"[34] The Commission may also deny a petition for reconsideration that relies "on facts or arguments which have not previously been presented to the Commission" unless those facts or arguments "relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission," or relate to "facts or arguments unknown to [the] petitioner until after his last opportunity to present them to the Commission."[35] In the Petition, Rising Eagle presents arguments that it either previously raised in its Notice Response or that it could have raised at that stage. Furthermore, Rising Eagle does not explain why it could not have raised these arguments at that stage. While these arguments may be procedurally deficient as they address facts and legal theories known to Rising Eagle at the time of its Notice Response, we deny them on the merits as discussed below. Rising Eagle did raise one argument based on new facts—the Commission did not consider Rising Eagle Capital Group's January 2021 bankruptcy filing when considering its inability to pay.[36] As discussed in more detail below, we do not find Rising Eagle Capital Group's bankruptcy changes our analysis or conclusions. We therefore affirm the $225,000,000 forfeiture assessed in the Forfeiture Order.

A. Rising Eagle Violated the Truth in Caller ID Act

10. Rising Eagle unlawfully spoofed robocalls with the intent to defraud, cause harm, and wrongfully obtain something of value. Courts have recognized that direct evidence of specific intent is rarely available.[37] Therefore, it is reasonable and often necessary to look at a party's actions to determine intent regarding a wrongful action.[38] In the first four months of 2019, Rising Eagle made over one billion robocalls, and the Bureau verified it spoofed at least 150,000 of these calls.[39] In the Forfeiture Order, we determined that Rising Eagle knowingly altered the display of caller ID information because Rising Eagle admitted that it knowingly selected unassigned numbers as caller ID as directed by one of its clients.[40] We further determined that Rising Eagle spoofed "with the intent to defraud, cause harm, or wrongfully obtain anything of value" on a number of grounds: (1) the spoofed prerecorded messages defrauded

[34] 47 CFR § 1.106(p)(3).

[35] *Id.* § 1.106(b)(2), (p)(2).

[36] Petition, *supra* note 29, at 15.

[37] *United States v. Dearing*, 504 F.3d 897, 901 (9th Cir. 2007); *United States v. Marabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984); *see also General Cigar Co., Inc. v. CR Carriers, Inc.*, 948 F. Supp. 1030, 1036 (M.D. Ala. 1996) ("Because one cannot know another's subjective intent, circumstantial evidence must be relied upon to indicate intent. The requirement of specific intent under the mail fraud statute is satisfied by the existence of a scheme which was reasonably calculated to deceive persons of ordinary prudence and comprehension and this intention is shown by examining the scheme itself.") (internal citations omitted).

[38] *See United States v. Davis*, 490 F.3d 541, 549 (6th Cir. 2007) (explaining that circumstantial evidence of fraudulent intent is sufficient because of the difficulty of proving intent to defraud through the availability of direct evidence) (citations omitted); *Tusa v. Omaha Auto Auction Inc.*, 712 F.2d 1248, 1253 (8th Cir. 1983) ("[I]ntent to defraud is ordinarily proved by circumstantial evidence."); *see also United States v. Sullivan*, 522 F.3d 967, 974 (9th Cir. 2008) ("[T]he scheme itself may be probative circumstantial evidence of an intent to defraud."); *United States v. Rogers*, 321 F.3d 1226, 1230 (9th Cir. 2003) ("It is settled law that intent to defraud may be established by circumstantial evidence."); *General Analytics Corp. v. CNA Ins. Cos.*, 86 F.3d 51, 54 (4th Cir. 1996) ("[B]ecause it is abstract and private, intent is revealed only by its connection with words and conduct."); *FDIC v. St. Paul Fire & Marine Ins. Co.*, 942 F.2d 1032, 1035 (6th Cir. 1991) ("[I]ntent . . . is thought to refer to a subjective phenomenon that takes place inside people's heads . . . . [The law is concerned only with] the external behavior ordinarily thought to manifest internal mental states . . . .") (citations omitted).

[39] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6225-26, para. 1.

[40] *Id.* at 6231, para. 15.

consumers by including misleading statements about the identity and nature of the products offered;[41] (2) the spoofing enabled an illegal robocall campaign that harmed consumers;[42] (3) the robocalls caused reputational harm to the companies misleadingly named in the messages;[43] (4) the spoofing harmed the subscribers of the spoofed numbers as well as numbering resources;[44] (5) the spoofed robocalls harmed the terminating service providers that carried Rising Eagle's calls;[45] and (6) Rising Eagle obtained something of value from the spoofing campaign in the form of monetary compensation and evasion of legal liability.[46] Other than the intent to defraud, which we address below, Rising Eagle does not contest any of these findings. Instead, Rising Eagle argues that we impermissibly used the content of the calls to impose liability for violations outside of the Commission's jurisdiction.[47]

11. We rejected a similar argument about using the contents of calls to prove violations in *Rhodes*.[48] Rising Eagle, like *Rhodes*, argues that the fraud or harm must be caused by the caller ID number itself rather than the content of the robocall messages or the broader robocall scheme.[49] Rising Eagle's assertion lacks any foundation in the text of the statute, and its interpretation would unduly narrow the intended scope of the Truth in Caller ID Act. In passing that statute, Congress was concerned, among other things, about hoaxes that were facilitated through caller ID spoofing.[50] Congress believed that spoofing enabled the spoofers to hide from law enforcement.[51] Congress did not say or suggest that the spoofed caller ID had to be the sole cause of the harm. Furthermore, in an action by the U.S. Department of Justice to collect the *Rhodes* forfeiture, the federal district court in that case agreed that "the language of the statute does not require proof that the person intended for the spoofing of caller identification information to cause harm itself."[52]

12. Our past cases are consistent with this interpretation. In *Abramovich*, the Commission found that Adrian Abramovich intended to cause harm to well-known travel companies and consumers because he mentioned the companies in his robocalls.[53] Adrian Abramovich selected caller IDs that had no connection to the mentioned companies; instead, the Commission determined that Abramovich's use of spoofing made it more likely that recipients would answer their phones and listen to the robocalls' harmful message.[54] In *Rhodes*, the Commission specifically relied on statements made in the messages to

[41] *Id.* at 6234-37, paras. 20-24.

[42] *Id.* at 6237-39, paras. 26-28.

[43] *Id.* at 6239-41, paras. 28-30.

[44] *Id.* at 6242-43, paras. 31-34

[45] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6241, para. 35.

[46] *Id.* at 6243-44, paras. 36-39.

[47] Petition, *supra* note 29, at 1-4.

[48] *Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Forfeiture Order, 36 FCC Rcd 705, 715, para. 25 (2021) (*Scott Rhodes Forfeiture Order*).

[49] Petition, *supra* note 29, at 3-4.

[50] 156 Cong. Rec. H8376, H8380 (2010); 156 Cong. Rec. H2522, H2523 (2010); *see also* 156 Cong. Rec. H8376, H8379 (2010) (discussing an incident where law enforcement personnel wasted valuable time investigating a hoax claim that a woman shot her baby).

[51] *See* 156 Cong. Rec. H8376, H8379 (2010) (discussing false attribution caused by spoofing).

[52] *United States v. Scott Rhodes*, No. CV 21-110-M-DLC, 2022 WL 17484847, at *4 (D. Mont. Dec. 7, 2022).

[53] *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4668, para. 16 (2018) (*Abramovich Forfeiture Order*).

[54] *Id.* at 4668, paras. 15-16.

show that Scott Rhodes had acted with intent.[55] In all of these cases, the Commission proved that the altering of caller ID furthered the fraud, harm, or "wrongfully obtain[ing] anything of value."[56]

13. Like our past cases, we reviewed the content of Rising Eagle's messages to determine whether Rising Eagle spoofed "with the intent to defraud, cause harm, or wrongfully obtain anything of value."[57] The Forfeiture Order discussed in detail how Rising Eagle intended to defraud, cause harm, or wrongfully obtain anything of value and how spoofing furthered those actions.[58] This conduct may also have violated other statutes outside of the Commission's jurisdiction,[59] but that does not foreclose us from imposing Truth in Caller ID Act liability if we have shown that Rising Eagle met each element of section 227(e). In the Forfeiture Order, we found that Rising Eagle altered the caller ID information for each of the 150,000 sampled robocalls and did so with the intent to defraud, cause harm, or wrongfully obtain anything of value; thus, we find that Rising Eagle's arguments are without merit.

B. Rising Eagle Intended to Defraud

14. "Intent" under the Act encompasses a broad scope of objectives, namely, an intent to (1) defraud; (2) cause harm; or (3) wrongfully obtain anything of value.[60] The Commission found Rising Eagle acted with intent to achieve not just one of the aforementioned objectives, but all three.[61] Rising Eagle challenges only the Commission's finding that it intended to defraud; not that it intended to cause harm or wrongfully obtain anything of value.[62] Accordingly, even if the Commission were to accept that Rising Eagle did not intend to defraud—which the Commission does not—the finding still stands on other grounds that Rising Eagle acted with requisite intent under the Act.

15. In the Forfeiture Order, we determined that Rising Eagle acted with intent to defraud recipients by placing spoofed robocalls.[63] Common law fraud requires "(1) a false representation (2) in reference to a material fact (3) made with knowledge of its falsity (4) and with the intent to deceive . . . ."[64] Rising Eagle falsely represented its clients were offering health insurance policies from well-known companies, *i.e.*, Blue Cross Blue Shield, Aetna, Cigna, and United.[65] These representations were material as a matter of law. Rising Eagle was aware of, or at least expressed a reckless indifference to, the veracity of the statements. The Commission properly inferred intent from Rising Eagle's close

[55] *Scott Rhodes Forfeiture Order*, *supra* note 48, at 715, paras. 25-26.

[56] 47 U.S.C. § 227(e).

[57] *Id.*; *see also* 47 CFR § 64.1604(a).

[58] 47 U.S.C. § 227(e); 47 CFR § 64.1604(a); *Rising Eagle Forfeiture Order*, *supra* note 2, at 6236-37, para. 24, 6238-39, para. 28, 6239, para. 29, 6240, para. 31, 6242-43, para. 35, 6243-44, paras. 37-39.

[59] *See* Petition, *supra* note 29, at 1-2 ("[T]he Commission's findings are in the nature of a state claim against unfair, deceptive, or abusive acts and practices or FTC Telemarketing Sales Rule ("TSR") case, masquerading as a Truth in Caller ID Act case, and therefore outside the Commission's jurisdiction."). We do not opine on whether Rising Eagle's conduct may have independently violated another statute.

[60] 47 U.S.C. § 227(e)(1).

[61] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6225-26, para. 1.

[62] Petition, *supra* note 29, at 4-10.

[63] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6233-37, paras. 19-24.

[64] *Pence v. United States*, 316 U.S. 332, 338 (1942).

[65] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6234, para. 20.

participation in devising the content of the misrepresentations and executing the scheme to bring the representations to consumers.[66]

16. In response, Rising Eagle alleges that its statements were not false, it had no knowledge the statements were false, lacked scienter, and the Commission could not prove its case without listening to every message.[67] We reject each of these arguments.

17. *Misrepresentations*. Rising Eagle included affirmative misrepresentations in its spoofed, prerecorded voice message calls in order to direct consumers toward Rising Eagle's clients. Rising Eagle argues it was "simply comparing the products being offered to those sold by [Cigna, Aetna, Blue Cross, and United]," and that "this comparison is akin to puffery."[68] Rising Eagle's misrepresentations constitute neither a legitimate comparison nor permissible puffery. Puffing is an "expression of exaggerated opinion . . . with the intent to sell a good or service" and is not actionable for fraud.[69] A key factor is whether the statement is something that consumers would rely upon in making a decision.[70] Typical examples of puffing include statements such as "high quality," "top dollar," "superb," "custom quality," or "super fine."[71] Similarly, comparing one product to another and claiming superiority is not an actionable misrepresentation.[72] However, subjective, comparative terms may be actionable.[73]

18. Rising Eagle's statements in the prerecorded message calls did not include vague or subjective terms:

> Are you looking for affordable health insurance with benefits *from a company you know*? Policies have all been reduced nationwide *such as Cigna, Blue Cross, Aetna, and United[,] just a quick phone call away*. Press 3 to get connected to a licensed agent or press 7 to be added to the Do Not Call list.[74]

The message informed consumers that they could obtain a health insurance policy from a well-known insurance provider and then proceeded to list several large health insurance companies. A consumer who pressed 3 to connect to a "licensed agent;" however, would not be able to purchase a policy from one of the named companies. The only subjective term in the message is the word "affordable," but the Forfeiture Order did not pass judgment on the affordability of the health insurance policies.

19. Rising Eagle argues that the phrase "such as" is a comparative term and that even if a consumer could not purchase a mentioned company policy, the consumer could still purchase a similar policy from a similar company.[75] We find this argument unpersuasive. *First*, the wording of the message strongly indicates that a consumer could buy an insurance policy from one of the listed companies. The

[66] *Id.* at 6236-37, para. 24.

[67] Petition, *supra* note 29, at 4-10.

[68] *Id.* at 6.

[69] *Carvelli v. Orwen Financial Corporation*, 934 F.3d 1307, 1319 (11th Cir. 2019).

[70] *See Reilly v. Pinkus*, 338 U.S. 269, 274-75 (1949); *All-Tech Telecom, Inc. v. Amway Corp.*, 174 F.3d 862, 868 (7th Cir. 1999).

[71] *See FTC v. Trudeau*, 579 F.3d 754, 765 (7th Cir. 2009); *GJP, Inc. v. Classic Jaguar, Inc.*, 251 S.W.3d 854, 889 (Tex. App. 2008).

[72] *Autohaus Inc. v. Aguilar*, 794 S.W.2d 459, 464 (Tex App. 1990).

[73] *Trudeau*, 579 F.3d at 765.

[74] Nomorobo, *(678) 261-1817 Is a Health Insurance Scam* (Feb. 6, 2019), https://www.nomorobo.com/lookup/678-261-1817 (emphasis added).

[75] Petition, *supra* note 29, at 6.

message began by soliciting whether the recipient is looking for a health insurance policy "from a company you know."[76] Then it listed the names of insurance companies immediately followed by the phrase, "just a quick phone call away."[77] Upon hearing this message, the consumer would likely believe that they could purchase an insurance policy from one of the named companies.[78] *Second*, Rising Eagle's cited cases do not support its argument. The cited cases all involve subjective comparisons between products or statements of superiority.[79] Here, Rising Eagle did not state its clients' health insurance policies are the best or some other subjective characterization. Instead, Rising Eagle said that consumers could buy a Blue Cross Blue Shield or Cigna health insurance policy when in fact they could not.

20. *Knowledge.* Rising Eagle acted with reckless indifference to the truth of the statements it included in its robocalls. It argues that "the actions of Petitioners cannot be considered to be made with 'reckless indifference' to whether any representations were true or false" because the statements were "mere puffery."[80] As discussed above, we do not find the statements included in the messages to be puffery.[81] Direct knowledge is not required to show fraud.[82] "One who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity."[83] As we stated in the Forfeiture Order, Rising Eagle acted with reckless indifference because it sent more than a billion robocalls without any consideration of the truthfulness of the messages that it had a direct role in crafting.[84] Moreover, health Advisors told Rising Eagle that it was not supposed to use the name of at least one of the well-known health insurance companies.[85] Despite this knowledge as well as the considerable consumer ire that these calls generated, Rising Eagle failed to correct any misleading aspects of the messages.[86] Rising Eagle's cited cases in support of its argument are not persuasive.[87] The court declined to find reckless indifference in *Bonhomme Investment Partners* because the defendant had no involvement in the loan at issue.[88] Similarly, in *John Beck Amazing Profits*, the spokesmen defendants did not maintain any significant control over the corporate defendants to become aware of the falsity of

[76] Nomorobo, *(678) 261-1817 Is a Health Insurance Scam* (Feb. 6, 2019), https://www.nomorobo.com/lookup/678-261-1817.

[77] *Id.*

[78] *See Reilly v. Pinkus*, 338 U.S. at 274 (discussing statements creating reliance).

[79] *See Autohaus*, 794 S.W.2d at 461 (statement by salesman that Mercedes is the "best engineered car in the world"); *Diais v. Land Rover Dallas, L.P.*, No. 05-15-00115-CV, 2016 WL 1298392, at 1 (Tex. App. Apr. 4, 2016) ("car was the most luxurious, rugged vehicle, with a supercharged high performance engine")

[80] Petition, *supra* note 29, at 9.

[81] *See supra* paras. 8-9.

[82] *United States v. Beecroft*, 608 F.2d 753, 757 (9th Cir. 1979); *see also United States v. Frick*, 588 F.2d 531, 536 (5th Cir. 1979); *Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 527 (Tex. 1998).

[83] *Beecroft*, 608 F.2d at 757.

[84] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6235, para. 23. *See also* Spiller Dep., *Texas v. Rising Eagle Capital Group, LLC* et al., No. 4:20-cv-02021196:16-18, Sept. 12, 2022 (on file in EB-TCD-18-00027781) ("Q: Do you know who wrote the content on those prerecorded messages? A: Jakob and I did.").

[85] Spiller Call Recording, 10.36.101.25-c44d35790a2465192dcc48922a136847, at 03:27 (on file in EB-TCD-18-00027781).

[86] *Rising Eagle Forfeiture Order*, *supra* note 2, at para. 23, n.104.

[87] Petition, *supra* note 29, at 10 (citing *Bonhomme Investment Partners, LLC v. Hayes*, No. 4:13CV475 CDP, 2015 WL 6702257, at *4 (E.D. Mo. Nov. 2, 2015); *FTC v. John Beck*, No. 2:09-cv-4719-FMC-FFMx, 2009 WL 7844076, at *14 (C.D. Cal. Nov. 17, 2009)).

[88] *Bonhomme Investment Partners*, No. 4:13CV475 CDP, 2015 WL 6702257, at *4 (E.D. Mo. Nov. 2, 2015).

their statements.[89] Here, Rising Eagle had significant control over the robocalling operation and a direct role in crafting the messages.[90] These actions included purchasing leads,[91] crafting messages,[92] recording messages,[93] and controlling the number of outbound calls.[94] We fully disposed of these arguments in the Forfeiture Order and do not see a reason to reconsider them here.

21. *Intent*. Rising Eagle argues consumers who ultimately purchased products from Health Advisors "did so knowing they were purchasing Health Advisors' health insurance plan," and that therefore Rising Eagle would "have no incentive, and likewise no intent to mislead consumers."[95] It does not follow that, merely because Health Advisors may have ultimately been transparent with consumers at the point of purchase, Rising Eagle did not intend to mislead consumers initially in furtherance of potentially making a sale. Rising Eagle's only support for this assertion is a New York state lower court decision involving the sale of an apartment where the broker made inconsistent statements about the size of the unit.[96] Here, the consumer did not receive any inconsistent advertisements *from Rising Eagle*. The fact that the consumer may have been alerted to the fraud upon speaking with a Health Advisors sales agent does not absolve Rising Eagle for the misrepresentations that it made in order to incent consumers to "press 3" to receive a sales pitch from Health Advisors.[97] Furthermore, Rising Eagle's argument underplays the savviness of fraudsters and the skill of call center sales agents to deceive consumers into parting with their money.[98] Even if some consumers would hang-up upon learning of the discrepancy, others may fall for the misrepresentation.[99]

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[89] *FTC v. John Beck*, No. 2:09-cv-4719-FMC-FFMx, 2009 WL 7844076, at *14 (C.D. Cal. Nov. 17, 2009).

[90] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6232, para. 17, 6235, paras. 21-22.

[91] See Bank of Am., Rising Eagle Global Payments Reporting U.S. Wire (Sep. 4, 2019) (Bank of Am. Wire Records) (on file in EB-TCD-18-00027781).

[92] See Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 03:55 (on file in EB-TCD-18-00027781) (showing Rising Eagle's involvement in crafting the messages); *see also* Spiller Dep., *Texas v. Rising Eagle Capital Group, LLC* et al., No. 4:20-cv-02021196:16-18, Sept. 12, 2022 (on file in EB-TCD-18-00027781) ("Q: Do you know who wrote the content on those prerecorded messages? A: Jakob and I did.").

[93] See PayPal, Global Investigations Report for Dates Jan. 1, 2019 – Sept. 17, 2019 (Sep. 29, 2019) (2019 PayPal Transactions) (on file in EB-TCD-18-00027781) (paying several hundred dollars to "record a professional female [A]merican voice over").

[94] *See* Spiller Call Recording, 10.36.101.11-39ed10350a24650b08066bee1f06792b, at 03:30 (on file in EB-TCD-18-00027781) (directing Mears to keep the call center agents busy with incoming calls); Spiller Call Recording, 10.36.101.11-949cdfe00a24650b549dd67859253002, at 09:01 (on file in EB-TCD-18-00027781) ("I'm really hoping that you can drive more volume to the rooms that need it."); Spiller Call Recording, 10.36.101.13-9ebc86d90a24650d4fb8896fad1a33c0, at 09:26 (on file in EB-TCD-18-00027781) ("Let's turn up the heat."); Spiller Call Recording, 10.36.101.13-5988bf5d0a24650d44b9d37bd41479ba, at 09:56 (on file in EB-TCD-18-00027781) (managing call volume).

[95] Petition, *supra* note 29, at 6 (emphasis omitted).

[96] *Estrada v. Metropolitan Property Group, Inc.*, 973 N.Y.S.2d 147, 148 (N.Y. App. Div. Oct. 15, 2013).

[97] *See Abramovich Forfeiture Order*, *supra* note 53, at 4668, para. 4 (finding that the sales agents had no connection to the misrepresented companies mentioned in the robocalls).

[98] *See id.* (fining a lucrative robocalling scheme that misrepresented the identity of the products offered); Gareth Norris et al., *The Psychology of Internet Fraud Victimisation: A Systematic Review*, 34 J Police Crim Pscyh 231, 235 (2019) (describing factors that fraudulent communications use to convince people to respond); Marguerite DeLiema, Tongjie Yon, & Kathleen H. Wilber, *Tricks of the Trade: Motivating Sales Agents to Con Older Adults*, 56 The Gerontologist 335, 342 (2014) (describing the psychological tactics, such as misleadingly adopting salient brand names, used by sales agents to manipulate consumers into purchasing fraudulent products); Jeffrey H. Doocy et al., *Telemarketing Fraud: Who Are the Tricksters and What Makes Them Trick?*, 14 Security Journal 7, 11 (2001)

(continued….)

22. *Call Sampling*. We used a sample of 150,000 calls to determine whether Rising Eagle altered caller ID information with the intent to defraud consistent with our past precedent.[100] It is reasonable, and necessary, for the Commission to review a subset of calls to identify the content and scope of the calls and to rely on other available evidence to reach its conclusions.[101] Rising Eagle argues that it was "unconscionable and clear error" to assess liability based only on a subset of calls.[102] Rising Eagle further claims that precedent, citing an unreported federal district court case, requires an examination of each call.[103] We rejected this argument in *Rhodes*.[104] Sampling is valid when there are multiple indicia—such as volume of calls, call patterns, number of complaints, news reports, and any other circumstantial evidence—showing consistency across the calls.[105] Here, Rising Eagle made over one billion robocalls between January 2, 2019 and May 14, 2019, which equated to millions of calls per day.[106] Complaints filed with the Commission and online consumer complaint websites, as well as multiple recordings from Nomorobo and YouMail, confirm the consistency of the message content.[107] Rising Eagle used a single caller ID on February 6, 2019, to transmit 5,425,755 prerecorded voice message calls that directly referenced insurance company names.[108] In comparison, we used a substantial sample of 150,000 calls to assess the forfeiture.[109] Moreover, Rising Eagle offers no evidence that the content deviated across calls.

23. Rising Eagle's cited case is similarly unavailing. The facts in *Newhart* differ from the facts here. The district court in *Newhart* observed that there were differences in the types of alleged calls: some calls were potentially unsolicited robocalls while others were responses from consumer inquiries.[110] The court concluded that "[a]s the challenged calls are not uniform in purpose, the telemarketing issue cannot be resolved by common, classwide evidence."[111] In contrast, each of the 150,000 sampled calls here shared a uniform purpose. Rising Eagle does not claim that the calls had more than one purpose, or that some of the calls were made with the consent of the called party. All of the calls were outbound,

(Continued from previous page)
(observing that a successful sales agent has "an ability to convince others that you are what you truly are not, and to have them believe that the lines you speak are truth").

[99] *See Abramovich Forfeiture Order*, *supra* note 53, at 4668, paras. 4, 16 (describing how Abramovich used false statements to induce people to connect to call centers who had no connection to the named brands in the robocalls).

[100] *See, e.g.*, *Scott Rhodes Forfeiture Order*, *supra* note 48, at 713-714, paras. 20-23; *Kenneth Moser dba Marketing Support Systems*, 35 FCC Rcd 13415, 13432, para. 39 (2020) (*Moser Forfeiture Order*); *Affordable Enterprises of Arizona, LLC*, 35 FCC Rcd 12142, 12143, para. 3 (2020) (*Affordable Forfeiture Order*); *Roesel Forfeiture Order*, *supra* note 10, at 9206, para. 5 (2018); *Abramovich Forfeiture Order*, *supra* note 53, at 4665, para. 7.

[101] *Rhodes Forfeiture Order*, *supra* note 48, at 714, para. 21.

[102] Petition, *supra* note 29, at 7.

[103] *Id.* at 7-8 (citing *Newhart v. Quicken Loans Inc.*, 9:15-CV-81250, 2016 WL 7118998, at *4-5 (S.D. Fla. Oct. 12, 2016)).

[104] *See Rhodes Forfeiture Order*, *supra* note 48, at 713-14, para. 20-22.

[105] *Id.*

[106] Call Detail Records, *supra* note 19.

[107] *See, e.g.*, YouMail Response, *supra* note 25; Nomorobo, *(678) 261-1817 Is a Health Insurance Scam* (Feb. 6, 2019), https://www nomorobo.com/lookup/678-261-1817 (emphasis added).

[108] Call Detail Records, *supra* note 19.

[109] Verified Call Detail Records, *supra* note 21.

[110] *Newhart v. Quicken Loans Inc.*, 9:15-CV-81250, 2016 WL 7118998, at *3-4 (S.D. Fla. Oct. 12, 2016).

[111] *Id.* at *4.

spoofed, telemarketing calls made with the intent to defraud, cause harm, and wrongfully obtain something of value. Additionally, *Newhart* is a case about class certification and interpreting Federal Rule of Civil Procedure 23(a)'s requirement of "numerosity, commonality, typicality, and adequacy" among the class.[112] Rising Eagle does not explain why the specific procedural standards of Rule 23(a) bind our application of the Truth in Caller ID Act on the merits.

24. In sum, we find that not only could Rising Eagle have raised these arguments in its Notice Response as they relate to facts and legal theories known to Rising Eagle at the time of its Notice Response, but also that none of the arguments change our conclusions that Rising Eagle spoofed at least 150,000 robocalls with the intent to defraud. [113]

C. Rising Eagle Had Adequate Notice that Its Conduct Violated the Truth in Caller ID Act

25. The Forfeiture Order did not violate Rising Eagle's due process rights. The Truth in Caller ID Act directs the Commission to provide notice according to either subsection 503(b)(3) (*i.e.*, notice and opportunity for a hearing before the Commission or an administrative law judge) or subsection 503(b)(4) of the Act (*i.e.*, a notice of apparent liability).[114] The Commission followed the procedures in subsection 503(b)(4) by adopting a notice of apparent liability on June 9, 2020, that detailed Rising Eagle's conduct and how it violated the Truth in Caller ID Act.[115] Rising Eagle had an opportunity to respond to the notice of apparent liability and did so on August 24, 2020.[116] We did not find any of the arguments raised in the Notice Response to be persuasive and imposed the entire proposed forfeiture of $225,000,000.[117]

26. Rising Eagle raises a due process challenge to the Truth in Caller ID Act as the Commission applied the statute to Rising Eagle's conduct in the Forfeiture Order.[118] It claims that the Forfeiture Order's application of the Truth in Caller ID Act is "impermissibly vague" as "[n]o reasonable person could possibly predict that a back-end technical consultant could be subject to a mind-bogglingly immense monetary penalty under a statute purporting to regulate caller ID information based on the Commission's tenuous interpretation of the content of prerecorded messages in another party's marketing campaign."[119] Specifically, Rising Eagle claims that the Truth in Caller ID Act should be interpreted narrowly in favor of the defendant as it is a penal statute and regulates speech.[120] Rising Eagle does not explain why it did not raise these arguments in its Notice Response; nonetheless, we find them legally and factually deficient.

27. The Forfeiture Order appropriately applied the Truth in Caller ID Act to Rising Eagle's conduct. A statute can be impermissibly vague for two independent reasons: (1) the statute "fails to

[112] *Id.* at *2.

[113] Even if we accepted Rising Eagle's argument that there was no intent to defraud—or the intent to defraud was not present in each call—Rising Eagle does not contest our findings that Rising Eagle spoofed all of the calls with the intent to harm and wrongfully obtain something of value. Thus, we would still uphold the forfeiture absent intent to defraud.

[114] 47 U.S.C. § 227(e)(5)(A)(iii).

[115] *Rising Eagle Notice*, *supra* note 26, at 5948, para. 1.

[116] Notice Response, *supra* note 27.

[117] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6226, para. 2.

[118] Petition, *supra* note 29, at 10-11.

[119] *Id.* at 12-13.

[120] *Id.* at 10-11.

provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits," and (2) the statute "authorizes or even encourages arbitrary and discriminatory enforcement."[121] The first factor is ameliorated if the statute contains a scienter requirement.[122] The second factor requires the statute to have sufficient specificity to provide standards to law enforcement.[123] Sufficient specificity includes words or phrases that have a well-known technical or other special meaning or a well-settled common-law meaning.[124] The level of specificity does not need to be exact as long as the public and law enforcement can readily determine what the statute "as a whole prohibits" as "we can never expect mathematical certainty from our language."[125] Additionally, civil statutes are reviewed at a less exacting standard than criminal statutes.[126] Rising Eagle's reliance on 19th century case law[127] to argue that civil statutes should be strictly construed is outdated as modern courts have moved away from strictly construing certain civil statutes by recognizing that the "consequences of imprecision are qualitatively less severe" in civil rather than criminal statutes.[128]

28. Our application of the Truth in Caller ID Act to Rising Eagle's conduct was sufficiently clear and reasonable to avoid any vagueness problems. *First*, the Truth in Caller ID Act has a scienter requirement: "It shall be unlawful for any person . . . to cause any caller identification service to *knowingly* transmit misleading or inaccurate caller identification information with the *intent* to defraud, cause harm, or wrongfully obtain anything of value. . . ."[129] We applied a knowing standard to Rising Eagle's conduct, finding that Rising Eagle *knowingly* altered caller ID information as it knew that it was altering caller ID to display what it thought were unassigned numbers.[130] We further determined that Rising Eagle *intended* to defraud as it acted with reckless indifference to whether the information it was broadcasting via more than one billion robocalls was truthful or not in order to deceive consumers.[131] Rising Eagle *intended* to cause harm to consumers, the insurance companies, the subscribers of the spoofed numbers as well as numbering resources, and the service providers that terminated the calls.[132] Rising Eagle also *intended* to wrongfully obtain compensation for the illegal calls and obtain a liability

[121] *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *see also Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

[122] *Hill*, 530 U.S. at 732; *see also Colautti v. Franklin*, 439 U.S. 379, 395 (1979); *Boyce Motor Lines v. United States*, 342 U.S. 337, 342 (1952); *Screws v. United States*, 325 U.S. 91, 101–103 (1945).

[123] *Hill*, 530 U.S. at 733.

[124] *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926).

[125] *Grayned*, 408 U.S. at 110; *see also Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (quoting *United States v. Petrillo*, 332 U.S. 1, 7-8 (1947) ("due process does not require 'impossible standards' of clarity")); *Boyce Motor Lines*, 342 U.S. at 330-31 ("But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded.").

[126] *See United States v. Harris*, 705 F.3d 929, 932 (9th Cir. 2013).

[127] Petition, *supra* note 29, at 10 (citing *United States v. Lacher*, 134 U.S. 624, 628 (1890); *Krutz v. Moffitt*, 115 U.S. 487 (1885); *Huber v. Reily*, 53 Fa. 112 (Pa. 1866)).

[128] *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982); *see also Lacher*, 134 U.S. at 628 (noting that courts have relaxed the rule of lenity in favor of deferring to the legislature); *cf. Jordan v. De George*, 341 U.S. 223, 231 (1951) (holding that while the statute at issue was civil, the penalty—deportation—was severe).

[129] 47 U.S.C. § 227(e)(1) (emphasis added).

[130] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6231, para. 15.

[131] *Id.* at 6236, para. 23.

[132] *Id.* at 6237-43, paras. 25-35.

shield.[133] Rising Eagle's claim that no reasonable person could predict that its actions would have resulted in a $225 million forfeiture is belied by the fact that Rising Eagle is a prolific robocaller that knowingly engaged in conduct specifically prohibited by the Truth in Caller ID Act. Moreover, Congress specifically set a large penalty for each violation to deter such malicious conduct.[134]

29. *Second*, the Truth in Caller ID Act gives clear guidance to Rising Eagle and law enforcement about what is prohibited. The Truth in Caller ID Act prohibits altering caller ID information "with the intent to defraud, cause harm, or wrongfully obtain anything of value."[135] Mathematical precision in the statutory language is not necessary to account for every possible permutation of fact patterns as that discretion can be left to law enforcement so long as there is a standard to guard against arbitrary or discriminatory enforcement.[136] We applied the common law definition of fraud in determining that Rising Eagle acted with the intent to defraud.[137] Rising Eagle does not challenge our conclusions that it intended to cause harm or wrongfully obtain something of value, but rather that we applied these factors inconsistently with each of our past spoofing actions. Rising Eagle fails to persuade us that we departed from the standard set by Congress in the Truth in Caller ID Act and affirmed in the nearly half-dozen spoofing forfeitures that the Commission has issued since 2018.[138] Its actions fall squarely within what the statute as a whole prohibits: altering caller ID information with intent to defraud, cause harm, or wrongfully obtain anything of value.[139] Rising Eagle argues that the Commission's Forfeiture Order "leaves the American public in a complete fog about when the content of their messages will subject them to multi-million dollar penalties for the content of their calls" due to a lack of "limiting principles."[140] To the contrary, we applied the "limiting principle" contained in the Truth in Caller ID Act: the altering of caller ID information must be accompanied by the intent to defraud, cause harm, or wrongfully obtain anything of value.[141] Each of Rising Eagle's proffered examples would only be illegal

[133] *Id.* at 6243-44, paras. 37-38.

[134] *See* Truth in Caller ID Act of 2009, Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e), (establishing a $10,000 penalty for each violation); *cf. BMW of North Am. v. Gore*, 517 U.S. 559, 574 (1996) ("Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose."); *Abramovich Forfeiture Order*, *supra* note 53 (finding that the forfeiture for spoofing weas not "grossly disproportional" to the gravity of the offense).

[135] 47 U.S.C. § 227(e).

[136] *See Village of Hoffman Estates*, 455 U.S. at 498-99.

[137] *See Rising Eagle Forfeiture Order*, *supra* note 2, at 6234, para. 20 (quoting *Pence v. United States*, 316 U.S. 332, 338 (1942)) ("(1) a false representation (2) in reference to a material fact (3) made with knowledge of its falsity (4) and with the intent to deceive . . . ."). An appropriate standard includes a well-settled common-law meaning. *See Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926).

[138] *See, e.g.*, *Scott Rhodes Forfeiture Order*, *supra* note 48, paras. 38-45, 725-26, para. 48 (harm to consumers, numbering resources, intent to evade liability); *Moser Forfeiture Order*, *supra* note 100, at 13425-27, paras. 20-28, 13429-30, paras. 32-33 (harm to consumers, intent to evade liability); *Affordable Forfeiture Order*, *supra* note 100, at 12160, para. 47, 12162-63, para. 53 (harm to consumers, numbering resources; wrongfully obtain sales, intent to evade liability); *Roesel Forfeiture Order*, *supra* note 10, at 9211-12, para. 19, 9215, para. 30, 9217, para. 37 (harm to consumers, numbering resources, service providers, wrongfully obtain sales, evade liability); *Abramovich Forfeiture Order*, *supra* note 53, at 4668, paras. 15-18 (harm to consumers, brand names, service providers, numbering resources). *Cf. FCC v. Fox Television Stations*, 567 U.S. 239, 254-58 (2012) (finding the Commission's action to be impermissibly vague where there had been changes in policy and inconsistent enforcement).

[139] *See Grayned v. City of Rockford*, 408 U.S. 104, 110-11 (1972) (looking to the purpose and context of the law).

[140] Petition, *supra* note 29, at 12, n.41.

[141] *See Rising Eagle Forfeiture Order*, *supra* note 2, at 6233-44, paras. 19-39 (discussing Rising Eagle's intent).

if the Commission found that there was intent to defraud, cause harm, or wrongfully obtain something of value. Absent those factors, there would be no violation of the Truth in Caller ID Act or our rules.[142] Rising Eagle knowingly caused the display of inaccurate caller ID information as part of a deceptive and illegal robocall campaign; therefore, we conclude that we appropriately assessed a forfeiture against Rising Eagle and did not violate its right to due process.[143]

30. Lastly, we do not need to apply a stricter standard for statutory vagueness despite the Truth in Caller ID Act being a civil statute as this forfeiture does not infringe on Rising Eagle's First Amendment rights.[144] Rising Eagle argues that broadcasting caller ID is a form of speech and the Commission's reliance on Rising Eagle's message content raises First Amendment concerns.[145] We explicitly rejected this argument in *Rhodes*.[146] The Truth in Caller ID Act regulates conduct, not speech.[147] The Supreme Court in *Spence v. Washington* determined that conduct becomes expressive and deserving of First Amendment protection when the actor intended to communicate a particular message by his actions and the message was understood by the audience.[148] Rising Eagle does not argue that it was trying to convey a message in its selected caller ID. Similarly, our reliance on the content of Rising Eagle's messages to prove elements of the Truth in Caller ID Act does not infringe on the First Amendment.[149] The content of the messages is relevant only to the extent that it demonstrates an intent to defraud, cause harm, or wrongfully obtain something of value. The Supreme Court has long recognized that the government may introduce "the evidentiary use of speech to establish the elements of a crime or to prove motive or intent."[150] We only reviewed the content of Rising Eagle's messages to show that they contained deceptive information, which establishes that Rising Eagle intended to defraud and cause harm. Thus, we see no reason to apply a higher tier of scrutiny here.

D. The Commission Considered All Relevant Factors in Assessing the Forfeiture Amount

31. After considering the relevant statutory factors and the Commission's *Forfeiture Policy Statement*, we affirm our finding that Rising Eagle is liable for a total forfeiture amount of $225,000,000. As explained in the Notice and Forfeiture Order, this forfeiture amount results from applying a base forfeiture of $1,000 to each of the 150,000 verified spoofed robocalls.[151] We then impose an upward

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[142] *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No, 11-39, Report and Order, 26 FCC Rcd 9114, 9120, para. 17 (2011).

[143] *See Affordable Forfeiture Order*, *supra* note 100, at 12150, para. 18; *Roesel* Forfeiture Order, *supra* note 10, at 9211-12, para. 19.

[144] *See Smith v. California*, 361 U.S. 147, 151 (1959) ("[S]tricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech . . . .").

[145] Petition, *supra* note 29, at 11.

[146] *Rhodes Forfeiture Order*, *supra* note 2, at 712, para. 18.

[147] *Id.*

[148] *Spence v. Washington*, 418 U.S. 405, 410-11, 415 (1974) (finding that defendant's alteration of the flag was intended to communicate a message that would have been likely understood by those who viewed it).

[149] *See Rhodes Forfeiture Order*, *supra* note 47, at 718, para. 32 (determining that reliance on message content was not prohibited by the First Amendment).

[150] *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993); *see also Street v. New York*, 394 U.S. 576, 594 (1969) (noting that nothing would render a conviction impermissible "merely because an element of the crime was proved by the defendant's words rather than in some other way").

[151] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 59; *Rising Eagle Notice*, *supra* note 26, at 5963-64, paras. 38-39.

adjustment of $75,000,000 to reflect the egregiousness and extent of the harm associated with the illegal spoofed robocalls.[152] The proposed base forfeiture amount and upward adjustment are consistent with the Commission's rules and precedent. We find no basis to reduce the forfeiture.

32. We reject Rising Eagle's argument that the Commission did not consider the various mitigating factors set forth in section 503(b)(2)(E) of the Act,[153] which requires the Commission to 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."[154] Contrary to Rising Eagle's claim that we ignored those factors, we considered each factor in the Notice and Forfeiture Order and do so again here.

33. *Nature, Circumstances, Extent, and Gravity of the Violation*. Rising Eagle made more than one billion robocalls during a period of four-and-a-half months in 2019 as part of a massive scheme to defraud consumers into thinking that the robocalls originated from well-known health insurance companies. At the time, this was the largest robocalling scheme that the Commission had ever investigated. As we found in the Notice and the Forfeiture Order, these calls generated considerable outrage from consumers:

> I am disabled and elderly. I continue to receive repeated calls from this same caller. They call 2 - 3 times per day. I sometimes fall when trying to get to the phone. This caller sells Cigna, BlueCross/Blue Shield health care plans and others. It's recorded. Can't hardly take it anymore. Can't get my rest.[155]

The robocalls also disrupted innocent third parties whose numbers Rising Eagle spoofed.[156] Rising Eagle's violations were extremely egregious and warrant a strong penalty.

34. *Culpability*. As we found in the Forfeiture Order, Rising Eagle is highly culpable for the violations.[157] Rising Eagle admitted that it configured the dialer, uploaded the messages, input the phone numbers to be called as well as the caller ID numbers, and connected the dialer to a Voice over Internet Protocol (VoIP) provider to place outbound calls to consumers.[158] Furthermore, Rising Eagle informed the Traceback Group that it intentionally stopped checking its calling list against the Do Not Call Registry because it found that more people would answer its calls.[159] Rising Eagle also had direct control over the volume of robocalls made on behalf of its clients.[160] This factor also supports an upward adjustment.

35. *Cooperation*. Rising Eagle's alleged willingness to cooperate with the Traceback Group does not provide a basis to reduce the forfeiture. We expect full cooperation from entities during our

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[152] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 59; *Rising Eagle Notice*, *supra* note 26, at 5964-65, paras. 40-41. Rising Eagle argues that this methodology resulted in a penalty above the statutory maximum, but Rising Eagle mistakenly conflates the statutory maximum for each single violation with the maximum allowed for continuing violations. Petition, *supra* note 29. The Commission did not apply a continuing violation theory in this case. *See* Notice, *supra* note 26, at 5964, para. 39 (proposing a $1,000 fine per spoofed call).

[153] *See* Petition, *supra* note 29, at 13.

[154] 47 U.S.C. § 503(b)(2)(E).

[155] FCC Complaint #3070502 (Feb. 21, 2019); *see also Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 60; *Rising Eagle Notice*, *supra* note 26, at 5964, para. 41.

[156] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6257, para. 60.

[157] *Id.* at para. 61.

[158] *Id.*

[159] *Id.*

[160] *Id.*

investigations and proceedings.[161] Rising Eagle claims that it "continually cooperated with the Traceback Group investigations and that it took corrective action to ensure that any alleged violations would not continue to occur."[162] The evidence in the record does not support Rising Eagle's argument that its violations were "merely a flash in the pan."[163] Rising Eagle's back-and-forth with the Industry Takeback Group only began *after* the date of the alleged violations. The Forfeiture Order covered violations up to May 14, 2019. Rising Eagle began promising compliance to the Industry Traceback Group on June 7, 2019.[164] It only started taking corrective action on September 10, 2019[165]—four months after the last violation cited in the Forfeiture Order. Months-long delays in attempting to comply with the law do not warrant a downward adjustment.[166] Furthermore, Rising Eagle completely disregarded the Bureau's attempts to contact it during the investigation—actions that delayed the investigation.[167] We see no reason to reward Rising Eagle's belated attempts to take corrective actions months after the violations.

36. *Prior Offenses*. While this is Rising Eagle's first violation of the Truth in Caller ID Act, we declined to reduce the penalty in the Forfeiture Order.[168] All of our previous spoofing forfeiture orders involve first-time violators of the Truth in Caller ID Act.[169] In each case, we did not apply a downward adjustment.[170] Following our past precedent, we decline to apply a downward adjustment here especially given the other section 503 balancing factors that support an upward adjustment.

37. *Inability to Pay*. In the Forfeiture Order we declined to consider Rising Eagle's inability to pay argument because Rising Eagle did not provide *any* financial information for us to assess its inability to pay, and we found Rising Eagle's violations to be egregious.[171] The *Forfeiture Policy Statement* issued in 1997 and cited by Rising Eagle in the Petition notes that the Commission will be sensitive to small entities who may not have the ability to pay a particular forfeiture or submit extensive accounting documents.[172] While Rising Eagle is a small entity, it does not warrant a reduction in the

[161] *See, e.g.*, *RB Commc'ns, Inc. d/b/a Starfone*, Forfeiture Order, 29 FCC Rcd 5668, 5672, para. 15 (2014) (*Starfone Forfeiture Order*); *Coleman Enter., Inc. d/b/a Local Long Distance, Inc.*, Order of Reconsideration, 16 FCC Rcd 10023, 10027–28, paras. 10–11 (2001); *4M of Richmond, Inc.*, Forfeiture Order, 19 FCC Rcd 15447, 15452, para. 15 (EB 2004); *Ne. Utils*., Forfeiture Order, 17 FCC Rcd 4115, 4117, para. 13 (EB 2002).

[162] Petition, *supra* note 29, at 14.

[163] *Id.*

[164] Affidavit of David Frankel at 2 (Jan. 9, 2020) (on file in EB-TCD-18-00027781) (Frankel Aff.).

[165] *Id.* at 3.

[166] *See Starfone Forfeiture Order*, 29 FCC Rcd at 5673, para. 16 (noting Starfone's months long delay in complying with registration requirements).

[167] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6258, para. 62.

[168] *Id.* at para. 65.

[169] *Rhodes Forfeiture Order*, *supra* note 48, at 728-29, para. 54; *Moser Forfeiture Order*, *supra* note 100, at 13432-33, para. 39; *Affordable Forfeiture Order*, *supra* note 100, at 12167-68, para. 70; *Roesel Forfeiture Order*, *supra* note 10, at 9226, para. 60; *Abramovich Forfeiture Order*, *supra* note 53, at 4678, para. 43. In *Abramovich*, we applied an upward adjustment for Abramovich's history of prior TCPA violations even though he was a first-time violator of the Truth in Caller ID Act. *Abramovich Forfeiture Order*, *supra* note 53, at 4678, para. 43.

[170] *Rhodes Forfeiture Order*, *supra* note 48, at 728-29, para. 54; *Moser Forfeiture Order*, *supra* note 100, at 13432-33 para. 39; *Affordable Forfeiture Order*, *supra* note 100, at 12167-68, para. 70; *Roesel Forfeiture Order*, *supra* note 10, at 9226, para. 60; *Abramovich Forfeiture Order*, *supra* note 53, at 4678, para. 43.

[171] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6259-60, para. 66.

[172] *The Commission's Forfeiture Policy Statement and Amendments of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087-17107 (1997); Petition at 16, n.60.

forfeiture amount. We have consistently declined to reduce a forfeiture based on inability to pay where we have found egregious conduct as we found here in the Forfeiture Order.[173] Rising Eagle argues that the bank account records reviewed by the Bureau should be sufficient to make an inability to pay determination,[174] but we rejected this exact same argument in the Forfeiture Order.[175] The bank records only represent a part of Rising Eagle's financial situation. While the Bureau did review a PayPal account and a bank account associated with Rising Eagle Capital Group LLC, the Bureau did not review any personal financial accounts associated with Spiller.

38. Besides these recycled arguments, Rising Eagle does raise one new issue by stating that "Rising Eagle" had declared bankruptcy after filing its Notice Response.[176] While this is new information that Rising Eagle could not have raised in its Notice Response, we do not find it availing and it does not change the outcome of this case.

39. Rising Eagle filed bankruptcy for Rising Eagle Capital Group LLC on January 29, 2021.[177] The petition lists that Rising Eagle Capital Group LLC has zero assets.[178] This bankruptcy filing, however, does not tell the entire story of Rising Eagle's financial status. *First*, the bankruptcy is only for Rising Eagle Capital Group LLC—one of nine parties named in the Forfeiture Order. It is not dispositive of the financial status of Spiller or Mears personally or the other named companies. *Second*, Spiller began winding down Rising Eagle Capital Group LLC a year prior to the bankruptcy filing. On October 16, 2019, Spiller and Mears formed Rising Eagle Capital Group – Cayman, a foreign entity registered in the Cayman Islands.[179] On January 13, 2020, Spiller and Mears removed themselves as managers of Rising Eagle and appointed Rising Eagle Capital Group – Cayman as Rising Eagle's manager.[180] They dissolved Rising Eagle Capital Group on February 28, 2020.[181] Rising Eagle transferred ownership of Rising Eagle Capital Group LLC to a foreign entity nearly a year prior to the bankruptcy filing. Given these circumstances, it is not dispositive of *Rising Eagle*'s financial status that *Rising Eagle Capital Group LLC* had no assets as of January 2021. We therefore conclude that Rising Eagle Capital Group LLC's bankruptcy filing does not require us to reconsider the penalty assessed in the Forfeiture Order.

40. We also reject Rising Eagle's inability to pay arguments with respect to Jakob Mears.[182] Rising Eagle did provide financial information for Mears, but we determined in the Forfeiture Order that Mears' inability to pay is outweighed by the other balancing factors consistent with past precedent.[183]

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[173] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6258, para. 64 (citing *Roesel Forfeiture Order*, *supra* note 10, at 9226, para. 58; *Abramovich Forfeiture Order*, *supra* note 53, at 4680, para. 48).

[174] Petition, *supra* note 29, at 14-15.

[175] *See Rising Eagle Forfeiture Order*, *supra* note 2, at 6258, para. 66 ("the Bureau did review a PayPal account and a bank account associated with Rising Eagle, but these accounts may reflect only a portion of Rising Eagle's income and financial resources.").

[176] Petition, *supra* note 29, at 15.

[177] Chapter 7 Voluntary Petition for Non-Individuals, *In re Rising Eagle Capital Group LLC*, Bankruptcy Petition #: 21-30282 (Bankr. S.D. Tex. Jan. 29, 2021) (Bankruptcy Petition).

[178] *Id.* at Form 206Sum.

[179] Rising Eagle Capital Group – Cayman, Search Report, Cayman Is. General Registry (Oct. 16, 2019). This was one month after Rising Eagle informed that the Traceback Group that it would make efforts to comply with the law. *See* Frankel Aff., *supra* note 164, at 2.

[180] Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (Jan. 13, 2020).

[181] Rising Eagle Capital Group LLC, Forfeiture of Certification, Office of the Sec'y of State of Tex. (Feb. 28, 2020).

[182] *Id.* at 16.

[183] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6260, para. 67.

Additionally, Rising Eagle repeats its argument that Mears only had limited involvement and therefore should not be subjected to the penalty.[184] This argument is contradicted by the record, which shows that Mears was listed as a manager on corporate documents and managed the day-to-day operations of Rising Eagle while Spiller was incarcerated.[185] The Petition does not raise any new facts or legal arguments; therefore, we decline to revisit the Forfeiture Order's conclusions regarding Mears' liability.

41. Lastly, Rising Eagle argues that the forfeiture is unjust compared to the penalties assessed by other law enforcement agencies on one of its clients for similar calls.[186] Rising Eagle notes that its client, Health Advisors, settled with the Missouri Attorney General for only $8,500.[187] We rejected similar arguments in the Forfeiture Order about Rising Eagle's role in the calls and see no reason to revisit them here absent any new evidence.[188] Furthermore, the Missouri enforcement action is not comparable as it involved a different statute, by a state agency, at a different stage of adjudication. Accordingly, after balancing all of the statutory factors, we find no basis to reduce the forfeiture.

IV. CONCLUSION

42. Based on the record before us and in light of the applicable statutory factors, we affirm our conclusion that Rising Eagle willfully and repeatedly violated the Truth in Caller ID Act by knowingly causing the display of inaccurate caller ID information with the intent to defraud, cause harm, and wrongfully obtain something of value. We further affirm our decision not to cancel or reduce the $225,000,000 forfeiture.

V. ORDERING CLAUSES

43. Accordingly, **IT IS ORDERED** that, pursuant to 47 U.S.C. § 405 and 47 CFR § 1.106, the Petition for Reconsideration filed by Rising Eagle is hereby **DISMISSED** and **DENIED** to the extent discussed herein.

44. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, 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 **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred million, twenty-five dollars ($225,000,000) for willfully and repeatedly violating section 227(e) of the Act, 47 U.S.C. § 227(e), section 64.1604 of the Commission's rules, 47 CFR § 64.1604, and Commission orders.[189]

45. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules upon release of this Memorandum Opinion and Order.[190] Rising Eagle shall send electronic notification of payment to Kristi Thompson, Enforcement Bureau, Federal Communications Commission, at kristi.thompson@fcc.gov on the date said payment is made. If the forfeiture is not paid

[184] Petition, *supra* note 29, at 15-16.

[185] *See Rising Eagle Forfeiture Order*, *supra* note 2, at 6252, para. 52 (describing Mears' role and direct involvement in the robocalling scheme); Rising Eagle Capital Group LLC, Certificate of Amendment, Office of the Sec'y of State of Tex. (June 1, 2018) (adding Mears as managing member of Rising Eagle Capital Group LLC).

[186] Petition, *supra* note 29, at 16-17.

[187] *Id.* at 17; *see also* Consent Judgment, *Missouri v. Health Advisors of America, Inc.*, No 19SL-CC00580 (Aug. 8, 2019).

[188] *Rising Eagle Forfeiture Order*, *supra* note 2, at 6231, para. 15, 6233-34, para. 19

[189] *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Report and Order, 26 FCC Rcd 9114 (2011).

[190] *Id.*

within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.[191]

46. In order for 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 to pay the proposed forfeiture, 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 shall notify Kristi Thompson at kristi.thompson@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[192]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[193] or printed CORES form[194] 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).[195] 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

[191] 47 U.S.C. § 504(a).

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

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

[194] 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.

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

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.

47. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

48. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to John C. Spiller, Rising Eagle Capital Group LLC, JSquared Telecom LLC, Rising Eagle Phoenix Group, Rising Phoenix Holdings, and RPG Leads at {[redacted]}, Jakob A. Mears at {[redacted]}, Rising Eagle Capital Group – Cayman at WB Corporate Services (Cayman) Ltd., P.O. Box 2775, 1st Fl. Artemis House, 67 Fort Street, George Town, Grand Cayman KYI-1111, Cayman Islands, Only Web Leads LLC at {[redacted]}, and to Mitchell N. Roth, Esq., Roth Jackson, 8200 Greensboro Dr., Suite 820, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary