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June 9 – July 19, 2023

FCC Record

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AUTHENTICATED
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INFORMATION
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FCC Record Volume 38, No. 7, Pages 5603 to 6509, June 9 – July 19, 2023



FEDERAL COMMUNICATIONS COMMISSION

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

In re Application of	)	NAL/Acct. No. MB-202341410006
	)	
	)	
Hochman Hawaii Five, Inc.	)	FRN: 0020749677
	)	Facility ID No. 164100
for Approval of Transfer of Control of	)	
KRYL(FM), Haiku, Hawaii	)	Application File No. 0000129922
	)	
from	)	
	)	
Hochman Hawaii Five, Inc. (Initial Shareholders)	)	
(Transferor)	)	
	)	
to	)	
	)	
George Hochman (Transferee)	)	

ORDER

Adopted: June 21, 2023 **Released: June 21, 2023**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Hochman Hawaii Five, Inc. (HHFI or Licensee), licensee of station KRYL(FM), Haiku, Hawaii (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned application (Voluntary Transfer Application)[1] for Commission consent to the proposed voluntary transfer of control of the Licensee from the initial shareholders of HHFI to George Hochman (Mr. Hochman).

2. In the course of processing the Voluntary Transfer Application, the Bureau staff found that the stock transfer agreement submitted with the application revealed that Mr. Hochman acquired control of HHFI without prior Commission authorization on November 11, 2020, and that another shareholder had previously acquired control of HHFI on September 1, 2017, without prior Commission authorization. The Consent Decree resolves the Bureau's investigation of the unauthorized transfers of control.

3. Pursuant to the terms of the Consent Decree, Licensee stipulates that it violated section 310(d) of the Communications Act of 1934, as amended (the Act),[2] and section 73.3540 of the Commission's rules (Rules).[3] The Consent Decree requires, among other things, that Licensee make a ten thousand dollar ($10,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be

[1] Application File No. 0000129922. *See Broadcast Applications*, Public Notice, Report No. PN-1-201229-01, at 1 (MB Dec. 29, 2020).

[2] 47 U.S.C. § 310(d).

[3] 47 CFR § 73.3540.

served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the Voluntary Transfer Application.

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

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

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Hochman Hawaii Five, Inc., and to its counsel, Richard J. Hayes, Jr., Esq., Attorney at Law, 27 Waters Edge Drive, Lincolnville, Maine 04849.

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

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[4] 47 U.S.C. § 4(i).

[5] 47 CFR §§ 0.61, 0.283.

[6] *Id.* § 73.3526(e)(10).

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

In re Application of	)	
	)	
Hochman Hawaii Five, Inc.	)	NAL/Acct. No. MB-20234140006
	)	FRN: 0020749677
for Approval of Transfer of Control of	)	Facility ID No. 164100
KRYL(FM), Haiku, Hawaii	)	
	)	
from	)	
	)	
Hochman Hawaii Five, Inc. (Initial Shareholders)	)	Application File No. 0000129922
(Transferor)	)	
	)	
to	)	
	)	
George Hochman (Transferee)	)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and Hochman Hawaii Five, Inc., licensee of station KRYL(FM), Haiku, Hawaii, for the purpose of terminating the Bureau's investigation concerning compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d) and section 73.3540 of the Commission's rules, 47 CFR § 73.3540.

II. DEFINITIONS

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

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

(b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;

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

(d) "Cavaness" means Cavaness Management;

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

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

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

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

(i) "HHFI" means Hochman Hawaii Five, Inc. licensee of station KRYL(FM), Haiku, Hawaii;

(j) "License" refers to the license authorization for station KRYL(FM), Haiku, Hawaii (Fac. ID No. 164100);

(k) "Licensee" means Hochman Hawaii Five, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;

(l) "Mays Estate" means the Estate of William G. Mays;

(m) "Mr. Hochman" means George Hochman;

(n) "Mr. Mays" means William G. Mays (deceased);

(o) "Mr. Poorman" means William S. Poorman;

(p) "Parties" means HHFI, Mr. Hochman, Mr. Poorman, and the Bureau;

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

(r) "Violations" mean the violations of the Voluntary Transfer of Control Rule and section 310(d) of the Act, discussed in paragraphs 5-7 below;

(s) "Voluntary Transfer Application" means the FCC Form 2100, Schedule 315 application for consent to the voluntary transfer of control of HHFI to Mr. Hochman, Application File No. 0000129922, as amended; and

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

III. BACKGROUND

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

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[1]

The Voluntary Transfer of Control Rule implements section 310(d) of the Act.[2] It is well-settled that "control" as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission.[3]

4. On March 3, 2011, HHFI acquired the License pursuant to a granted assignment of license application.[4] At that time, Licensee was owned by four shareholders: Mr. Hochman, Mr. Poorman, Mr. Mays, and Cavaness, each holding 25% of Licensee's voting stock.[5]

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[1] 47 U.S.C. § 310(d).

[2] 47 CFR § 73.3540. In particular, the Voluntary Transfer of Control Rule states, in pertinent part, that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control." *Id*. § 73.3540(a). The rule further states that an "[a]pplication for consent to the transfer of control of a corporation holding a construction permit or license must be filed on [FCC Form 2100, Schedule 315]" where the transaction involves the transfer of a controlling interest from one individual to another. *Id*. § 73.3540(d).

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

[4] Application File No. BALH-20101018ACQ (granted Nov. 30, 2010, and consummated on March 3, 2011). *See Broadcast Actions*, Public Notice, Report No. 47375, at 7 (MB Dec. 3, 2010).

[5] Voluntary Transfer Application, Agreement for Stock Transfer at 1 (Transfer Agreement).

5. On December 4, 2014, Mr. Mays died.[6] Subsequently, on September 1, 2017, the Mays Estate transferred the HHFI voting stock previously held by Mr. Mays to Mr. Poorman, increasing his ownership interest from 25% to 50% of HHFI's voting stock and giving him negative control of the Licensee, without prior Commission consent as required by section 310(d) of the Act and the Voluntary Transfer of Control Rule.[7]

6. On November 11, 2020, Mr. Poorman and Mr. Hochman executed the stock transfer agreement whereby Mr. Poorman agreed to transfer all his HHFI voting stock to Mr. Hochman.[8] In the stock transfer agreement, without prior Commission consent, Mr. Poorman also granted to Mr. Hochman, "[p]ending the formal transfer of Mr. Poorman's interests [to Mr. Hochman] . . . all of [Mr. Poorman's] power, authority and ability to participate as a shareholder in [HHFI]."[9] Thus, upon execution of the stock transfer agreement on November 11, 2020, Mr. Hochman acquired *de facto* control of Licensee without prior Commission approval, in violation of section 310(d) of the Act and the Voluntary Transfer of Control Rule.

7. On December 21, 2020, Licensee filed the instant Voluntary Transfer Application.[10] In the course of processing the Voluntary Transfer Application, the Bureau staff found that the stock transfer agreement submitted with the application revealed the unauthorized transfers of control discussed above but Licensee did not provide any explanation for the unauthorized transfers in the application.

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

IV. TERMS OF AGREEMENT

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

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

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

12. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Licensee agrees to

[6] Voluntary Transfer Application.

[7] Voluntary Transfer Application, Transfer Agreement, Recitals.

[8] Transfer Agreement § 2.

[9] *Id.* § 4.

[10] *See Broadcast Applications*, Public Notice, Report No. PN-1-201229-01, at 1 MB (Dec. 29, 2020).

the terms, conditions, and procedures contained herein.

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

14. **Admission of Liability**. Licensee stipulates that its actions described in Paragraphs 5-7 violated section 310(d) of the Act and the Voluntary Transfer of Control Rule.

15. **Civil Penalty**. Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of ten thousand dollars ($10,000), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[11]

16. **Payment**. Licensee will also send electronic notification of payment to Kim Varner at Kim.Varner@fcc.gov and Christopher Clark at Christopher.Clark@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[12] or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[13]

> 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).[14] 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

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

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

[13] 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.

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

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. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Voluntary Transfer Application after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 16 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Voluntary Transfer Application.

18. **Waivers**. Licensee agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[15] relating to the Consent Decree or Adopting Order.

19. **Severability**. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

21. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Licensee does not expressly consent), such provision will be superseded by such Rule or order.

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

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

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

25. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent

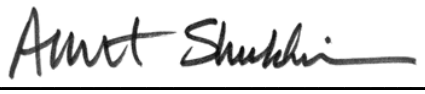
[15] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

Decree.

26. **Authorized Representative**. Each Party represents and warrants to the other Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: 
Albert Shuldiner, Chief, Audio Division

Date: 6/21/2023

Hochman Hawaii Five, Inc.

By: _____
George Hochman, President

Date: _____

Decree.

26. **Authorized Representative**. Each Party represents and warrants to the other Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

Hochman Hawaii Five, Inc.

By: _____
George Hochman, President

Date: 6/19/23

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 23-486
Released: July 18, 2023

OFFICE OF ENGINEERING AND TECHNOLOGY CHANGES *EX PARTE* STATUS FROM "PERMIT-BUT-DISCLOSE" TO "EXEMPT" FOR THE NATIONAL SECURITY THREATS TO COMMUNICATIONS SUPPLY CHAIN NOTICE OF INQUIRY

ET Docket No. 21-232

On June 17, 2021, the Federal Communications Commission adopted a Notice of Inquiry (NOI) seeking comment on leveraging its equipment authorization program to create incentives in the equipment authorization processes for improved trust through the adoption of cybersecurity best practices in consumer devices.[1] The NOI sought comment on, among other things, the means to promote greater cybersecurity for "Internet of Things" (IoT) devices, including seeking comment on the work done in this context by the National Institute of Standards and Technology (NIST) and by industry stakeholders.[2]

While Notices of Inquiry are, by default, classified as exempt proceedings under the Commission's rules governing *ex parte* presentations, this proceeding was designated as permit-but-disclose under section 1.1206 of the Commission's rules, 47 CFR § 1.1206.[3]

In the time since the Commission issued the NOI significant developments have taken place to advance initiatives for IoT cybersecurity labeling. For example, NIST hosted a virtual public workshop on this topic and published its "Recommended Criteria for Cybersecurity Labeling for Consumer Internet or Things (IoT) Products."[4] Recently it has become apparent that additional opportunities for informal discussion would greatly assist various agencies in crystallizing their thinking on these issues. To facilitate the free exchange of exploratory ideas among the staff of Federal agencies and interested stakeholders working toward the important goal of promoting security of IoT devices, by this Public

[1] *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program; Protection Against National Security Threats to the Communications Supply Chain through the Competitive Bidding System*, ET Docket No. 21-232, EA Docket No. 21-233, Notice of Proposed Rulemaking and Notice of Inquiry, 36 FCC Rcd 10578 (2021). This Public Notice pertains only to the NOI component of these proceedings, which is part of ET Docket No. 21-232.

[2] *See id.* at 10616-18, paras. 100-101, 104-105.

[3] *Id.* at 10618-19, para. 108.

[4] *See* Workshop on Cybersecurity Labeling Programs for Consumers: Internet of Things (IoT) Devices and Software (September 14-15, 2021), *available at* https://www.nist.gov/news-events/events/2021/09/workshop-cybersecurity-labeling-programs-consumers-internet-things-iot; *Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products*, National Institute of Standards and Technology (Feb 4, 2022), *available at* https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf.

Notice, the Office of Engineering and Technology, pursuant to the Commission's rules,[5] announces that the NOI portion of this proceeding will revert to being treated as an exempt proceeding as set forth under section 1.1204(b)(1) of the Commission's rules, 47 CFR § 1.1204(b)(1). Accordingly, *ex parte* presentations to or from Commission decision-making personnel directed to the merits or outcome solely of the NOI in ET Docket No. 21-232 are permissible and need not be disclosed. Presentations that are directed in whole or in part to the merits or outcome of issues raised in the June 17, 2021 NPRM or in the Further Notice of Proposed Rulemaking in ET Docket No. 21-232 and EA Docket No. 21-233[6] remain subject to the permit-but-disclose rules.

For further information, contact Jamison Prime of the Office of Engineering and Technology, at (202) 418-7474.

-FCC-

[5] 47 CFR § 1.1200(a) (stating that "[w]here the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.").

[6] *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program; Protection Against National Security Threats to the Communications Supply Chain through the Competitive Bidding System*, ET Docket No. 21-232, EA Docket No. 21-233, Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC 22-84 (rel. Nov. 25, 2022).

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

In the Matter of	)	
	)	
Payson Council for the Musical Arts, Inc.	)	File No.: EB-IHD-20-00031269
	)	CD Acct. No.: 202332080029
Licensee of Noncommercial Educational Station	)	FRN: 0017011065
KRIM-LP, Payson, Arizona	)	Facility ID No. 134059
	)	

ORDER

Adopted: July 7, 2023 **Released: July 7, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Payson Council for the Musical Arts, Inc. (Licensee), licensee of noncommercial educational low power FM (LPFM) radio station, KRIM-LP, Payson, Arizona (Station), violated the Commission's underwriting laws by broadcasting announcements on behalf of for-profit entities in exchange for consideration. The Commission adopted these laws to preserve the unique non-profit and locally oriented nature of LPFM stations. To settle this matter, the Licensee admits that it broadcast prohibited commercial advertisements in exchange for consideration. The Licensee agrees to implement a compliance plan and pay a $20,000 civil penalty and a suspended civil penalty of $41,500 in the event of default.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding the Licensee's compliance with section 399B of the Communications Act of 1934, as amended (Act),[1] and sections 73.503(d) and 73.801 of the Commission's rules[2] (collectively, the Commission's underwriting laws).

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of the Licensee's basic qualifications to hold or obtain any Commission license or authorization.[3]

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act, 47 U.S.C. § 154(i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

6. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against the Licensee and/or its Station related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

[1] 47 U.S.C. § 399b.

[2] *See* 47 CFR §§ 73.503(d), 73.801 (applying section 73.503 of the Commission's rules to low power FM (LPFM) stations).

[3] *See id.* § 1.93(b).

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Christopher Higgins, President, Payson Council for the Musical Arts, Inc., 215 W. Frontier Street, Payson, Arizona 85541.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Payson Council for the Musical Arts, Inc.	)	File No.: EB-IHD-20-00031269
	)	CD Acct. No.: 202332080029
Licensee of Noncommercial Educational Station	)	FRN: 0017011065
KRIM-LP, Payson, Arizona	)	Facility ID No. 134059
	)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Payson Council for the Musical Arts, Inc. (Licensee), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether the Licensee violated section 399B of the Communications Act of 1934, as amended,[1] and sections 73.503(d) and 73.801 of the Commission's rules[2] in connection with the broadcast by the Licensee of underwriting acknowledgments over its noncommercial educational low power FM radio station, KRIM-LP, Payson, Arizona. To resolve this matter, the Licensee agrees to implement a compliance plan and pay a $20,000 civil penalty and a suspended civil penalty of $41,500 in the event of default as defined herein.

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended.[3]

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

(c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

(d) "CD Acct. No." means account number 202332080029, associated with payment obligations described in paragraph 18 of this Consent Decree.

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

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

(g) "Complaints" means the third-party submissions received by, or in the possession of, the Commission or Bureau, on file in EB-IHD-20-00031269, alleging violations of the Underwriting Laws.

[1] *See* 47 U.S.C. § 399b.

[2] *See* 47 CFR §§ 73.503(d), 73.801 (applying section 73.503 of the Commission's rules to low power FM (LPFM) stations).

[3] 47 U.S.C. § 151 *et seq.*

(h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.

(i) "Covered Employees" means all employees and agents of the Licensee who perform, supervise, oversee, or manage the performance of, duties that relate to the Licensee's responsibilities under the Communications Laws, including the Underwriting Laws.

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

(k) "Investigation" means the investigation commenced by the Bureau in EB-IHD-20-00031269 regarding whether the Licensee violated the Underwriting Laws during the period from approximately January 2020 through the Effective Date.

(l) "Licensee" means Payson Council for the Musical Arts, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

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

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

(p) "Station" means noncommercial educational low power FM radio station, KRIM-LP, Payson, Arizona (Facility ID No. 134059).

(q) "Underwriting Announcement" means any announcement, message, or other program material, broadcast over a noncommercial station licensed to the Licensee, or by any of its successors, assigns, or transferees, made in exchange for consideration, on behalf of any for-profit entity.

(r) "Underwriting Compliance Checklist" means the obligation under paragraph 14 that describes the steps that a Covered Employee must follow to ensure that all material approved for broadcast is consistent with relevant past Commission precedent regarding the Underwriting Laws.

(s) "Underwriting Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.

(t) "Underwriting Laws" means, individually or collectively, section 399B of the Act[4] and sections 73.503(d) and 73.801 of the Rules,[5] and the decisions and orders of the Commission interpreting these provisions.

II. BACKGROUND

3. The Underwriting Laws define an advertisement as programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.[6] Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.[7] Although contributors of funds to such stations may receive on-air

[4] *See* 47 U.S.C. § 399b.

[5] *See* 47 CFR §§ 73.503(d), 73.801 (applying section 73.503 of the Commission's rules to low power FM (LPFM) stations).

[6] 47 U.S.C. § 399b(a).

[7] *Id.* § 399B(b)(2).

acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only and must not promote the contributors' products, services, or businesses.[8] Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.[9]

4. The Commission received Complaints alleging that the Licensee violated the Underwriting Laws by airing ongoing announcements on the Station that impermissibly promoted their for-profit underwriters' products or services.[10] A complainant also submitted recordings (Recordings) of alleged advertisements broadcast on the Station. The Bureau issued letters of inquiry, which included transcripts of the Recordings, seeking information about the complained-of programming, the Licensee's efforts to comply with the Underwriting Laws, and related issues.[11] The Licensee's responses[12] confirmed that the Licensee broadcast the complained-of Underwriting Announcements over the Station at various times from approximately October 2019 to approximately September 2021. On the basis of the record in this Investigation, the Bureau contends that the Licensee violated the Commission's Underwriting Laws. The Parties engaged in settlement negotiations and agreed to enter into this Consent Decree.

III. TERMS OF AGREEMENT

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

[8] Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992).

[9] *Id*.; *see Xavier University,* Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921, para. 6 (1990) (citing *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, BC Docket No. 21136, Memorandum Opinion and Order, 90 FCC 2d 895 (1982) (subsequent history omitted)).

[10] *See, e.g.*, Complaint No. 3786882-1 (Jan. 29, 2020) (on file in EB-IHD-20-00031269).

[11] Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Chris Higgins, President, Payson Council for the Musical Arts, Inc. (Oct. 8, 2020) (on file in EB-IHD-20-00031269) (LOI); First Supplemental Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Chris Higgins, President, Payson Council for the Musical Arts, Inc. (Sept. 2, 2021) (on file in EB-IHD-20-00031269); Second Supplemental Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Chris Higgins, President, Payson Council for the Musical Arts, Inc. (Mar. 30, 2022) (on file in EB-IHD-20-00031269) (primarily addressing alleged involvement of KRIM LLC in connection with alleged ads on the Station). The LOI also addressed possible technical rule violations of the Commission's rules. After investigation, including reviewing the Licensee's LOI Response addressing these matters, we found no violations of technical rules within our purview on this matter.

[12] *See* E-mail from Chris Higgins, President, Payson Council for the Musical Arts, Inc., to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, et al. (Nov. 5, 2020, 17:18 MST); E-mail from Chris Higgins, President, Payson Council for the Musical Arts, Inc., to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, et al. (Nov. 5, 2020, 17:41 MST); E-mail from Chris Higgins, President, Payson Council for the Musical Arts, Inc., to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Nov. 9, 2020, 15:18 MST); E-mail from Chris Higgins, President, Payson Council for the Musical Arts, Inc., to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Nov. 9, 2020, 16:19 MST) (collectively, LOI Response); E-mail from Chris Higgins, President, Payson Council for the Musical Arts, Inc., to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, et al. (Sept. 21, 2021, 18:50 MST); E-mail from Chris Higgins, President, Payson Council for the Musical Arts, Inc., to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, et al. (Apr. 18, 2022, 15:26 MST).

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

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

8. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation and dismiss the Complaints. In consideration for the termination of the Investigation and dismissal of the Complaints, the Licensee agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against the Licensee concerning the matters that were the subject of the Investigation, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[13]

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

10. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that its actions with respect to the broadcast of the material referenced in paragraph 4 of this Consent Decree violated the Commission's Underwriting Laws.

11. **Reporting Obligation with Respect to Any Discontinuance of Station Operation**. In the event the Licensee discontinues Station operation, the Licensee agrees to notify the Bureau accordingly. Such notification to the Bureau must take place within seven (7) calendar days of the Licensee discontinuing Station operation and must be sent electronically to the Bureau at Pamela.Gallant@fcc.gov, Frederick.Giroux@fcc.gov, and Melissa.Marshall@fcc.gov. Such notification to the Bureau should include copies of any notices or requests to cancel the Station's license and any other instruments of authorization submitted to the Commission's Audio Division or the Commission's online Licensing and Management System (LMS).

12. **Station License Cancellation**. In the event the Commission cancels the Station's license, after forty (40) calendar days of the Commission's Public Notice specifying that the Station's license is cancelled, the requirements set forth in paragraphs 13 through 16 and paragraph 19 of this Consent Decree shall expire.

13. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, the Licensee shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the

[13] *See* 47 CFR § 1.93(b).

Compliance Officer shall have specific knowledge of the Underwriting Laws prior to assuming his/her duties.

14. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Underwriting Laws, the Licensee will implement, at a minimum, the following procedures:

(a) **Operating Procedures**. Within thirty (30) calendar days after the Effective Date, the Licensee shall establish Operating Procedures that all Covered Employees must follow to help ensure the Licensee's compliance with the Underwriting Laws. The Licensee's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee complies with the Underwriting Laws. The Licensee shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Underwriting Laws.

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

(c) **Compliance Training Program**. The Licensee shall establish and implement a Compliance Training Program on compliance with the Underwriting Laws and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Underwriting Laws under paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Licensee shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

15. **Reporting Noncompliance**. The Licensee shall report any noncompliance with the Underwriting Laws and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, with a copy submitted electronically to Pamela Gallant at Pamela.Gallant@fcc.gov, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

16. **Compliance Reports**. The Licensee shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

(a) Each Compliance Report shall include a detailed description of the Licensee's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Underwriting Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Licensee, stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 15 of this Consent Decree.

(b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[14]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Licensee, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, with a copy submitted electronically to Pamela Gallant at Pamela.Gallant@fcc.gov, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa Marshall at Melissa.Marshall@fcc.gov.

17. **Termination Date**. Unless stated otherwise including above in paragraph 12, the requirements set forth in paragraphs 13 through 16 shall expire thirty-six (36) months after the Effective Date.

18. **Civil Penalty**. The Licensee will pay a civil penalty to the United States Treasury in the amount of twenty thousand dollars ($20,000) within thirty (30) calendar days of the Effective Date (Civil Penalty). The Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[15] Upon an Event of Default, as described below in paragraph 21, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated.

19. **Suspended Penalty**. The Licensee further agrees that, upon an Event of Default, as described below in paragraph 21, the Licensee will pay a further civil penalty to the United States Treasury in the amount of forty-one thousand, five hundred dollars ($41,500) within thirty (30) calendar days of such Event of Default (Suspended Penalty). Upon an Event of Default, as described below in paragraph 21, the Suspended Penalty shall also become a "Claim" or "Debt" as defined in 31 U.S.C.

[14] 47 CFR § 1.16.

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

§ 3701(b)(1).[16] All procedures for collection as permitted by law may, at the Commission's discretion, be initiated.

20. **Payment**. The Licensee shall send electronic notification of payment to Pamela Gallant at Pamela.Gallant@fcc.gov, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa Marshall at Melissa.Marshall@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[17]

- 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[18] or printed CORES form[19] 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).[20] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will

[16] *Id*.

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

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

[19] 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.

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

be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. **Event of Default**. The Licensee agrees that an Event of Default shall occur upon: (a) the failure by the Licensee to pay the full amount of the Civil Penalty to the U.S. Treasury on or before the due date specified in paragraph 18 of this Consent Decree; or (b) the release of an order within thirty-six (36) months of the Effective Date by the Commission or Bureau, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that the Licensee or any other entity owned, operated, or controlled by, or under common control with the Licensee violated the Commission's Underwriting Laws and/or the terms of this Consent Decree.

22. **Interest, Charges for Collection, and Acceleration of Maturity Date**. After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty and the Suspended Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty and the Suspended Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by the Licensee.

23. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[21] relating to the matters addressed in this Consent Decree.

24. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

26. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

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

30. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

31. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

32. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

_____
Loyaan A. Egal
Chief
Enforcement Bureau

_____
Date

_____
Christopher Higgins
President
Payson Council for the Musical Arts, Inc.

_____
Date

PUBLIC NOTICE

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

News media information 202-418-0500
Internet: http://www.fcc.gov (or ftp.fcc.gov)
TTY (202) 418-2555

DA No. 23-494

Report No. SAT-01731 **Friday June 9, 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-20230327-00064 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/08/2023

The above-captioned file number is listed as granted in ICFS to reflect operations pursuant to section 1.62 of the Commission's rules, 47 CFR § 1.62.

SAT-STA-20230327-00065 E S2237 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/08/2023

The above-captioned file number is listed as granted in ICFS to reflect operations pursuant to section 1.62 of the Commission's rules, 47 CFR § 1.62.

SAT-STA-20230426-00096 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/08/2023

The above-captioned file number is listed as granted in ICFS to reflect operations pursuant to section 1.62 of the Commission's rules, 47 CFR § 1.62.

SAT-STA-20230504-00105 E Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/08/2023

The above-captioned file number is listed as granted in ICFS to reflect operations pursuant to section 1.62 of the Commission's rules, 47 CFR § 1.62.

SAT-STA-20230523-00122 E S2237 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 06/08/2023

On June 8, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 60 days, to continue to operate Intelsat 11's C-band beam over a new coverage area in the fixed-satellite service, using the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) frequency bands at the 43.0º W.L. orbital location.

SAT-STA-20230524-00124 E S2406 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 06/08/2023

On June 8, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 30 days, to operate Intelsat 902's C-band beam over a new coverage area in the fixed-satellite service, using the 3625-4200 MHz (space-to-Earth) and 5850-6425 MHz (Earth-to-space) frequency bands at the 50.1º W.L. orbital location.

INFORMATIVE

SAT-LOA-20230315-00060 S3163 Lockheed Martin Corporation

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective June 9, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

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

DA 23-495
Released: June 9, 2023

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

WC Docket No(s). 23-144 & 23-146

Comments Due: June 26, 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 **July 10, 2023**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] *See* 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day… unless the Commission has notified the applicant that the grant will not be automatically effective.").

applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **June 26, 2023**.[5] Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[6] Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[7] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.[8] Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or

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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*.

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): TDS Metrocom, LLC**
WC Docket No. 23-144, Comp. Pol. File No. 1837
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-144*%22))
Affected Service(s) – all retail voice and data services provided over Unbundled Network Elements to 1433 commercial customers
Service Area(s) – Beloit, Janesville, Kenosha, Madison, Menomonee Falls, Milwaukee, Parkside, Pewaukee, Racine, Stoughton, and Waukesha, Wisconsin
Authorized Date(s) – on or after July 11, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): TDS Metrocom, LLC**
WC Docket No. 23-146, Comp. Pol. File No. 1839
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-146*%22))
Affected Service(s) – all retail voice and data services provided over Unbundled Network Elements to 1854 residential customers
Service Area(s) – Appleton, Beloit, De Pere, Fond du Lac, Green Bay, Janesville, Kaukauna, Kenosha, Little Chute, Madison, Menomonee Falls, Middleton, Milwaukee, Neenah, Oshkosh, Parkside, Pewaukee, Racine, Somers, Stoughton, and Waukesha, Wisconsin
Authorized Date(s) – on or after July 11, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-496
Released: June 9, 2023

WIRELINE COMPETITION BUREAU CONFIRMS NO NEW TEXTING FORMATS FOR TEXT-TO-988

WC Docket No. 18-336

The Wireline Competition Bureau (Bureau), in accordance with the *Text-to-988 Second Report and Order*, provides notice that the 988 Suicide & Crisis Lifeline (Lifeline) will continue to receive and respond to short message service (SMS) messages[1] and that no new texting formats have been implemented or requested at this time.

In the *Text-to-988 Second Report and Order*, the Commission directed the Bureau to consult with the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) and the Department of Veterans Affairs (VA) on whether they have implemented, or seek to implement, any new texting formats to 988, to ensure that our texting requirements keep pace with their need to provide critical, life-saving counseling over text messages.[2] The Bureau must also issue a public notice on or before June 30, 2023, and no less frequently than annually thereafter, that either announces that no new texting formats are required or seeks comment on implementation parameters for covered text providers to transmit any additional text message formats to 988.[3] Although no new texting formats have been implemented or requested by our federal partners at this time, the Bureau will continue to coordinate with SAMHSA and the VA over the next year so we may be able to facilitate any enhancements to this life-saving resource.

For further information, please contact Michelle Sclater at Michelle.Sclater@fcc.gov.

- FCC -

[1] *See Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Second Report and Order, 36 FCC Rcd 16901, 16916-17, para. 25 & n.108 (2021) (*Text-to-988 Second Report and Order*); *see also* 47 CFR § 64.1600(m) ("The term 'short message service' or SMS refers to a wireless messaging service that enables users to send and receive short text messages, typically 160 characters or fewer, to or from mobile phones and can support a host of applications.").

[2] *Text-to-988 Second Report and Order*, 16916, para. 25. Additional texting formats could include multimedia message service (MMS), which "refers to a wireless messaging service that is an extension of the SMS protocol and can deliver a variety of media, and enables users to send pictures, videos, and attachments over wireless messaging channels." *See* 47 CFR § 64.1600(k).

[3] *Text-to-988 Second Report and Order*, 16916-17, para. 25 & n.108.

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 23-497
Released: June 9, 2023

AGENDA RELEASED FOR 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 4:00 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 agenda for the meeting is attached to this Public Notice as an appendix.[2]

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.

More information about the CEDC is available at https://www.fcc.gov/communications-equity-

[1] 5 U.S.C. App. 10.

[2] This agenda may be modified at the discretion of the CEDC Chair and the Designated Federal Officer.

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 –

APPENDIX

COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL

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

June 15, 2023
10:00 a.m. – 4:00 p.m.

AGENDA

10:00 am:	**Welcome and Opening of Meeting** Holly Saurer, Chief, Media Bureau
10:05 am:	**Welcome Remarks** Jessica Rosenworcel, Chairwoman Federal Communications Commission
10:10 am:	Brendan Carr, Commissioner Federal Communications Commission
10:15 am:	Geoffrey Starks, Commissioner Federal Communications Commission
10:20 am	Nathan Simington, Commissioner Federal Communications Commission
10:25 am	Jamila Bess Johnson, Designated Federal Officer, CEDC, Media Bureau Diana Coho, Consumer Affairs and Outreach Specialist, CEDC Consumer and Governmental Affairs Bureau
10:30 am:	**CEDC Chair/Vice Chairs' Opening Remarks** Heather Gate, Chair, CEDC, Connected Nation Nicol Turner Lee, Ph.D., Vice Chair, CEDC, Brookings Institution Susan Au Allen, Vice Chair, CEDC, US Pan Asian American Chamber of Commerce Education Foundation
10:45 am:	**Call to Order of the June 15, 2023 CEDC Meeting/Roll Call of CEDC Members** Heather Gate, Chair, CEDC, Connected Nation

Jamila Bess Johnson, Designated Federal Officer, CEDC, Media Bureau

11:00 am: **Innovation and Access Working Group Report**
Robert Brooks, Digital Solutions Specialist
WHUR-FM, Howard University
Chair, Innovation and Access Working Group

Jennifer J. Jackson, Executive Vice President
Stellar TV and Central City Productions
Workstream 2 Member (*Access to Capital*)

Charles Harrell, II, President and CEO
The IT Architecture Corporation
Workstream 2 Member

Matthew Bauer, Vice President and Executive Director of Connected Communities
Wireless Research Center
Workstream 3 Lead (*Digital Equity/Closing the Digital Skills Gap*)

Dr. Dianne Lynch, President
Stephens College
Workstream 3 Member

Susan Corbett, Founder
National Digital Equity Center
Workstream 3 Member

Leticia Latino-Van Spluteren, CEO
Neptuno USA
Workstream 3 Member

11:50 am **Lunch Break**

1:00 pm **Diversity and Equity Working Group**
Christopher Wood, Executive Director
LGBT Technology Partnership & Institute
Chair, Diversity and Equity Working Group

Antonio Tijerino, President and CEO
Hispanic Heritage Foundation
Workstream 2 Co-Lead (*Future of Work*)

Jenny Alsayegh, Senior Director of Strategic Initiatives & Partnerships
USTelecom
Workstream 2 Member

Aama Nahuja, Legal Counsel,
A Wonder Media Company, LLC
Workstream 3 Co-Lead (*Non-Traditional Anchor Institutions*)

Charlyn Stanberry, Vice President, Government Relations
National Association of Broadcasters
Workstream 3 Co-Lead

Melody Spann Cooper, Chair and CEO
Midway Broadcasting Corporation
Workstream 3 Co-Lead

Ellen Schned, CEO, Strong Women Alliance
Workstream 4 Co-Lead (*Diverse Media, Communications and Tech Ownership and Development*)

Graham "Skip" Dillard, Format Vice President of Rhythmic AC and Throwback Formats and Brand Manager
Audacy New York 94.7 WXBK-FM
Workstream 4 Co-Lead

Melody Spann Cooper, Chair and CEO,
Midway Broadcasting Corporation
Workstream 4 Co-Lead

1:50 pm **Meeting Break**

2:10 pm **Digital Empowerment and Inclusion Working Group Report**
Dominique Harrison, Ph.D.
Representing the Joint Center for Political and Economic Studies
Chair, Digital Empowerment and Inclusion Working Group

Dr. Jon Gant, Dean, School of Library and Information Sciences
North Carolina Central University
Subject Matter Expert, Digital Empowerment and Inclusion Working Group

Dr. Christopher Ali, Associate Professor
Department of Media Studies, University of Virginia
Workstream 2 Co-Lead (*Listening Sessions on Lessons Learned: Connecting Opportunity Communities to Broadband During the COVID-19 Pandemic*)

Chris James, President and CEO
National Center for American Indian Enterprise Development
Workstream 2 Co-Lead

Anisa Green, Director, Federal Regulatory
AT&T
Workstream 2 Member

Matthew Wood, Vice President of Policy and General Counsel
Free Press
Workstream 2 Member

	Clayton Banks, CEO Silicon Harlem Workstream 3 Co-Lead (*Public Convening: Connecting Opportunity Communities to Broadband During the COVID-19 Pandemic*)
3:00 pm	**Questions/Comments from the Public**
3:20 pm	**Closing Remarks**
	Heather Gate, Chair, CEDC, Connected Nation
	Nicol Turner Lee, Ph.D., Vice Chair, CEDC, Brookings Institution
	Susan Au Allen, Vice Chair, CEDC, US Pan Asian American Chamber of Commerce Education Foundation
	CEDC Members, Working Group Members, Subject Matter Experts
3:45 pm	**Adjournment** Heather Gate, Chair, CEDC, Connected Nation
	Jamila Bess Johnson, Designated Federal Officer, CEDC

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, D.C. 20554

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

DA 23-498
Released: June 12, 2023

MEDIA BUREAU ANNOUNCES JUNE 12, 2023 EFFECTIVE DATE OF CERTAIN REVISIONS TO PART 74 COMMISSION RULES FOR LOW POWER TELEVISION AND TELEVISION TRANSLATOR STATIONS

MB Docket Nos. 03-185, 22-261

On April 17, 2023, the Commission released a Report and Order (*Report and Order*) in its proceeding to update the Commission's Part 74 rules for low power television and television translator services to reflect the current operating environment.[1] The *Report and Order* adopted rules to reflect the all-digital nature of these services since they were required to terminate all analog television operations by July 13, 2021, and made other updates to ensure the rules clearly reflect the Commission's requirements and are understandable to all stakeholders.

By this *Public Notice*, the Media Bureau announces that the *Report and Order* was published in the Federal Register on May 12, 2023,[2] and therefore the *Report and Order* becomes effective 30 days thereafter, on June 12, 2023.[3] The changes to the following rule sections are effective on June 12, 2023: Sections 74.702, 74.708, 74.709, 74.710, 74.737, 74.750, 74.762, 74.783, 74.786, 74.787, 74.789, 74.790, 74.791, and 74.795.[4]

In addition, changes to the other rules adopted in the *Report and Order* contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. Those changes are still pending such approval. Specifically, those rules include: Sections 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784.[5] The Media Bureau will release a future Public Notice announcing the effective date of the remaining rule changes.

For additional information on this proceeding, contact Emily Harrison, Media Bureau by email at Emily.Harrison@fcc.gov or Mark Colombo, Media Bureau by email at Mark.Colombo@fcc.gov.

- FCC -

[1] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket Nos. 03-185 and 22-261, Report and Order, FCC 23-25 (Apr. 17, 2023) (*Report and Order*).

[2] *Establishing Rules for Digital Low Power Television and Television Translator Stations*, 88 Fed. Reg. 30654 (May 12, 2023).

[3] Because the 30th day after the date the summary was published in the Federal Register is Sunday, June 11, 2023, the effective date is the next business day, Monday, June 12, 2023. *See* 47 CFR § 1.4.

[4] 47 CFR §§ 74.702, 74.708, 74.709, 74.710, 74.737, 74.750, 74.762, 74.783, 74.786, 74.787, 74.789, 74.790, 74.791, and 74.795.

[5] 47 CFR §§ 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784.

PUBLIC NOTICE

Federal Communications Commission
45 L Street, NE
Washington, DC 20554

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

DA 23-499
June 12, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 5 (SOUTHERN CALIFORNIA) REGIONAL PLANNING COMMITTEE TO HOLD 800 MHZ PUBLIC SAFETY PLANNING MEETING

PR Docket No. 90-221

The Region 5 (Southern California)[1] 800 MHz Regional Planning Committee (RPC) will hold a public safety planning meeting on Thursday, August 17, 2023. Beginning at 1:00 p.m. (PST), the 800 MHz RPC meeting will convene at the San Diego Sheriff's Dept., Operations Center, 5520 Overland Ave., San Diego, CA 92123.

The agenda for this meeting includes:

- Call to Order - accept nominations for Chair, Vice Chair and Secretary
- Conduct Votes for Positions (per plan requirements)
- New Business

The Region 5 800 MHz RPC meeting is open to the public. It is essential that public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's rules, 47 CFR § 90.523, be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in the planning for the use of public safety spectrum in the 800 MHz band within Region 5 should plan to attend. For further information, please contact:

James C Donovan
NPSPAC Region 5 Chairman
Senior Telecommunications Engineer
Radio and Microwave unit
Orange County Sheriff Technology Division Communications Bureau
PH: 714-628-7050
JDonovan@ocsheriff.gov

- FCC -

[1] The Region 5 (Southern California) 800 MHz regional planning area consists of ten counties: Imperial, Kern, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, San Louis Obispo and Ventura.

Federal Communications Commission
Washington, D.C. 20554

June 12, 2023

DA 23-500
In Reply Refer To:
1800B3-SDW
Released: June 12, 2023

First Dallas Media, Inc.
c/o Joseph C. Chautin, III, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, LA 70471
(sent by electronic email to: jchautin@hardycarey.com)

East Texas Community Broadcasting
3554 FM 747 S
Jacksonville, TX 75766
(sent by electronic email to: gwbetten@gmail.com)

Michelle Bradley
Founder, REC Networks
11541 Riverton Wharf Rd
Mardela Springs, MD 21837
(sent by electronic email to: lpfm@recnet.com)

Albert Alan David
2632 Kenilworth Ave.
Berwyn, IL 60402
(sent by electronic email to: albert.a.david@hotmail.com)

In re: **NCE MX Group 205**

First Dallas Media, Inc.
New NCE (FM), Golinda, Texas
Facility ID No. 763726
Application File No. 0000165973

East Texas Community Broadcasting
New NCE (FM), Riesel, Texas
Facility ID No. 768280
Application File No. 0000167216

Informal Objection

Dear Applicants, Counsel, and Objectors:

We have before us two mutually exclusive (MX) applications filed by First Dallas Media, Inc. (FDMI) and East Texas Community Broadcasting (ETCB) for construction permits for new noncommercial educational (NCE) FM stations for different communities in Texas, which the Media Bureau (Bureau) designated as NCE MX Group 205.[1] The Bureau identified the FDMI Application as the tentative selectee of the group,[2] granted the unopposed FDMI Application, but subsequently rescinded the grant and directed FDMI and ETCB to file amendments to their respective applications.[3] We also have before us an Informal Objection (REC Objection) filed by REC Networks.[4] For the reasons set forth below, we dismiss the REC Objection and identify the ETCB Application as the new tentative selectee of NCE MX Group 205.

Background. The subject applications were filed during the November 2021 NCE FM filing window.[5] In the *Fifth Fair Distribution Order*, the Bureau conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended (Act), and determined that three applications in NCE MX Group 205—which consisted of a total of eight applications—were eligible for a fair distribution preference based on second NCE service population totals—the FDMI Application, the ETCB Application, and the Specialized Educational Broadcasting (SEB) Application. FDMI claimed it would provide a second NCE service to 14,178 people; SEB to 6,151 people; and ETCB a combined first and second NCE service to 8,575 people.[6] Because FDMI's proposal would provide a new second NCE service to at least 5,000 more people than ETCB's next best proposal, the Bureau identified the FDMI Application as the tentative selectee of NCE MX Group 205.[7] The Bureau established a 30-day period for

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[1] *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021); *see also* Application File Nos. 0000165973 (FDMI Application) and 0000167216 (ETCB Application). NCE MX Group 205 originally consisted of eight total applications, including the FDMI and ETCB Applications. *See infra* note 9.

[2] *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 6, para. 12 (MB Nov. 9, 2022) (*Fifth Fair Distribution Order*).

[3] *NCE MX Group 205*, Letter Order, DA 23-264, at 3 (MB Mar. 29, 2023) (*Letter Order*).

[4] *See* Pleading File No. 0000213898 (filed Apr. 14, 2023). Albert A. David also filed two Informal Objections to the ETCB Application. *See* Pleading File No. 0000213747 (filed Apr. 12, 2023); Pleading File No. 0000214116 (filed Apr. 22, 2023) (David Objections). The Bureau will not consider petitions, comments, or objections against the tentative selectee until after the petition to deny period has run. *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 20, para. 101 (Oct. 25, 2022) (emphasis added) ("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."). Accordingly, we do not consider the David Objections herein, and each will remain in pending status until the petition to deny period has run.

[5] *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

[6] *See Fifth Fair Distribution Order* at 5, para. 12.

[7] *Id.*

filing petitions to deny, and stated if no petitions were filed, it would grant the FDMI Application and dismiss the remaining applications, including the ETCB and SEB Applications.[8] No petitions to deny were filed, and in the *Public Notice*, the Bureau granted the FDMI Application and dismissed the remaining applicants as non-tentative selectees.[9]

On December 19, 2022, ETCB filed a Petition for Reconsideration (First Petition), claiming that FDMI misrepresented the fair distribution population figures in the FDMI Application by excluding two stations from its fair distribution calculation.[10] ETCB claimed that, when counting those two stations, FDMI would only provide new NCE service to 1,706 persons, and therefore, the FDMI Application did not meet the requirements to claim a fair distribution preference for second NCE service.[11] ETCB urged the Commission to rescind the grant of the FDMI Application and to grant the ETCB Application.[12] Additionally, on January 8, 2023, ETCB filed a second Petition for Reconsideration (Second Petition) seeking *nunc pro tunc* reinstatement of its dismissed application.[13] ETCB also stated that its own application contained typographical errors in the directional antenna pattern, and that it included with the Second Petition an amendment correcting those errors.[14] On March 29, 2023, the Bureau released the *Letter Order* in which it (1) granted the First Petition and rescinded the grant and tentative selection of the FDMI application; (2) granted the Second Petition and reinstated the ETCB Application; and (3) afforded FDMI and ETCB each 15 days in which to file amendments to their applications before further Bureau or Commission action.[15]

On April 5, 2023, ETCB filed an amendment to correct the errors in the directional antenna pattern, and on April 12, 2023, ETCB filed an amendment to downgrade its combined first and second NCE service from 8,575 to 8,474 people.[16] On April 10, 2023, FDMI amended its Application to disclaim its eligibility for a fair distribution preference.[17]

The REC Objection argues that, based on the incorrect fair distribution population figures in the FDMI Application, the Commission should "completely reconsider the MX Group as a whole, including the reinstatement" of the SEB Application.[18] REC notes that the SEC Application claimed a fair

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[8] *Id*. at 7, para. 21; *see also* Application File No. 0000166809 (SEB Application).

[9] Six applicants, including SEB and ETCB, were dismissed as non-tentative selectees. *See Actions*, Public Notice, Report No. PN-2-221213-01 (MB Dec. 13, 2022) (*Public Notice*) (granting the FDMI Application and dismissing the mutually exclusive ETCB Application, SEB Application (Application File No. 0000166809), and the applications of Ministerio Espiritu Santo (Application File No. 0000167797), Iglesia Cristian Restauracion y Vida (Application File No. 0000167785), Alpha Consulting Christian Education (Application File No. 0000166689), and Centro Familiar de Restauracion y Vida (Application File No. 0000167080)). The eighth applicant, Red-C Apostolate: Religious Education for the Domestic Church (Application File No. 0000167206), filed an amendment after the issuance of the *Fifth Fair Distribution Order*, which rendered its application a singleton.

[10] *See* Pleading File No. 0000205723 (filed Dec. 19, 2022).

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

[12] *Id*. at 5.

[13] *See* Pleading File No. 0000206492 (filed Jan. 8, 2023).

[14] *Id*. at 4.

[15] *Letter Order, supra* note 3, at 3.

[16] ETCB Application.

[17] FDMI Application.

[18] REC Objection at 2.

distribution preference and, if the ETCB Application is not reinstated, the SEB Application should be granted instead of the FDMI Application, which does not claim such a preference.[19]

Discussion. Pursuant to section 309(d) of the Act,[20] petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.[21]

Procedural. The REC Objection does not oppose the grant of the ETCB Application, but rather seeks the reinstatement of the dismissed SEB Application. We therefore treat it as a petition for reconsideration. Treated as a petition for reconsideration, we find the REC Objection deficient on procedural grounds and dismiss it. The Commission issued the *Public Notice* dismissing the remaining applications in NCE MX Group 205, including the SEB Application, on December 9, 2022,[22] and the dismissals became final on January 22, 2023.[23] However, REC Network did not file the REC Objection until April 14, 2023. Accordingly, we dismiss the REC Objection as untimely. Further, the REC Objection is defective as a petition for reconsideration because REC Networks lacks standing to seek the reinstatement of the SEB Application.[24]

Fair Distribution Analysis. Based on FDMI's and ETCB's amended applications, we conduct a new fair distribution analysis. FDMI does not claim a fair distribution preference. Because ETCB is the only applicant to claim a fair distribution preference, ETCB is the new tentative selectee in Group 205.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Informal Objection filed by REC Networks, on April 14, 2023 (Pleading File No. 0000213898), treated as a petition for reconsideration, **IS DISMISSED**.

IT IS FURTHER ORDERED that the application filed by East Texas Community Broadcasting (Application File No. 0000167216) is **TENTATIVELY SELECTED** to be awarded a construction permit for a new NCE FM station in Riesel, Texas, and its application **IS ACCEPTED FOR FILING**,

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[19] *Id.* at 3.

[20] 47 U.S.C. § 309(d).

[21] *See, e.g.*, *WWOR-TV, Inc*., Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc*., Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

[22] *See Public Notice*.

[23] *See* 47 CFR § 1.106(f) (providing for 30 days after public notice of final Commission action for petitioners to file petitions for reconsideration); 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau's decision for the Commission on its own motion to order the record before it for review). *See also* 47 CFR § 1.4(b)(4). Only ETCB sought reconsideration of the dismissal of its application.

[24] *See* REC Objection (recognizing that REC Networks lacks standing to file a petition to deny, and urging the Commission to consider the pleading as an informal objection pursuant to section 73.3587 of the Rules). In order to show standing to file a petition for reconsideration, a petitioner who is not a party to the proceeding must: (1) state with particularity the manner in which its interests are adversely affected by the action taken, and (2) show good reason why it was not possible to participate in the earlier stages of the proceeding. 47 CFR § 1.106(b)(1). REC Networks is not a party to the proceeding, and the REC Objection does not include any showing of how it is adversely affected by the action taken or any showing of good reason for its failure to participate previously. *See e.g.*, *Kalamazoo Broadcasting Company, Inc*., Letter Order, DA 23-280, at 2 (MB Apr. 3, 2023) (third-party lacks standing to seek reinstatement of a cancelled Commission authorization).

establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, **TO DISMISS** the mutually exclusive application of First Dallas Media, Inc. (Application File No. 0000165973), and **TO GRANT** the application of East Texas Community Broadcasting (Application File No. 0000167216) **CONDITIONED UPON** that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of	)	
	)	
Entravision Holdings, LLC	)	Facility ID No.: 10259
	)	NAL/Acct. No.: 202341420019
Licensee of WJAL, Silver Spring, Maryland	)	FRN: 0001529627
	)	LMS File No. 0000115597
	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 12, 2023 **Released: June 12, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)[1] of Entravision Holdings, LLC (Licensee or Applicant), for renewal of its license for full power television broadcast station WJAL, Silver Spring, Maryland (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully and repeatedly violated sections 73.3526(e)(11)(i) and Section 73.3526(e)(11)(iii) of the Commission's rules (Rules)[2] by failing to timely file the Station's quarterly issues/programs lists and by failing to file with the Commission in a timely manner its Children's Television Programming Reports. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of eighteen thousand dollars ($18,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.[3] Subsection 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its Online Public Inspection File (OPIF), on a quarterly basis, an issues/programs list that details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issues addressed, as well as the time, date, duration, and title of each program in which the issues were treated.[4] Issues/programs lists must be placed in the station's OPIF by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.[5]

3. Section 73.3526(e)(11)(iii) of the Rules requires every commercial television licensee to place in its Online Public Inspection File (OPIF) a Children's Television Programming Report that details "the licensee's educational and informational programming efforts, including programs aired by the

[1] Application of Innovative Media Technologies for Renewal of License, LMS File No. 203370 (filed. Nov. 9, 2022) (Renewal Application).

[2] 47 CFR §§ 73.3526 (e)(11)(i), 73.3526 (e)(11)(iii).

[3] *See generally* 47 CFR § 73.3526.

[4] 47 CFR § 73.3526(e)(11)(i).

[5] *Id*.

station that are specifically designed to serve the educational and informational needs of children" during the preceding period.[6] Copies must be retained until final action on the station's next license renewal application.[7] In 2019 the Commission modified its children's television programing rules changing the filing requirement from a quarterly to annual requirement.[8]

4. On May 13, 2021, the Licensee filed its Renewal Application. In its Renewal Application, the Licensee identified numerous issues/programs lists and Children's Television Programming Reports that were not timely uploaded by the deadlines established in section 73.3526(e)(11)(i) and (e)(11)(iii) of the Rules.[9] Consistent with the Applicant's disclosures, Video Division staff inspection of the Station's OPIF confirmed that since the prior renewal of the Station's license, the Licensee uploaded ten issues/programs lists more than one year late; three issues/programs lists between one month and one year late; and one issues/programs list more than one month late.[10] The Licensee also filed three quarterly Children's Television Programming Reports over one year late.[11]

5. The Licensee notes that the bulk of the OPIF late-filed items occurred during the time periods when the Commission undertook the reverse auction and post-auction procedures. The Station relinquished its spectrum usage rights as part of the television incentive auction and entered into a channel sharing agreement with WUSA, Washington, District of Columbia.[12] As the result of confusion related to the Station's operational responsibilities during implementation of its channel sharing agreement, the Licensee inadvertently failed to prepare and upload certain required documents to its OPIF.[13] The Licensee submits that it has taken necessary actions to ensure that any failure to upload documents on a timely basis does not reoccur in the future, including the replacement of its corporate manager for OPIF

[6] *Id.* Full power (commercial and noncommercial) and Class A television broadcasters have been required to upload various public file documents to their OPIF, including Children's Television Programming Reports, since 2012 and have been required to utilize the OPIF for the entirety of the license term. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012); *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012) (announcing an effective date of August 2, 2012, for, *inter alia*, the requirement that television stations begin to post new Children's Television Programming Reports to their OPIF).

[7] 47 CFR § 73.3526 (e)(11)(iii).

[8] *See Children's Television Programming Rules, Modernization of Media Regulation Initiative*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC 5822 (2019). Through third quarter 2019, Children's Television Programming Reports were required to be placed in a station's OPIF by the tenth day of the succeeding calendar quarter. Full power and Commercial and Class A television licensees' final quarterly Children's Television Programming Report were due October 10, 2019. *See Media Bureau Announces Effective Date and Provides Guidance on Transition Procedures for KidVid Reporting and Compliance with Revised Safe Harbor Processing Guidelines,* Public Notice, 34 FCC Rcd 7878 (MB 2019). All subsequent Children's Television Programming Reports were required to be placed in a station's OPIF on an annual, within 30 days after the end of the calendar year. *Id.*

[9] Application, WJAL Amendment Exhibit (filed May 11, 2023) (Renewal Amendment). After discovering that the Issues Programs Lists for Q3 2016 - Q3 2017 were not present in the online public file, as reported in Renewal Exhibit (OPIF-J), the Licensee reviewed its records, identified the missing unfiled reports, and uploaded them on May 2, 2023. *Id*. at 1 n.1.

[10] Application, Renewal Exhibit OPIF-J.

[11] Application, Renewal Exhibit CPR-J.

[12] *See* Modification of a Licensed Facility for DTV Application, LMS File No. 0000029066 (granted Aug. 25, 2017); License to Cover for DTV Application, LMS File No. 0000030734 (granted Oct. 12, 20.

[13] Application, Renewal Exhibits CPR-J and OPIF-J.

compliance with a new management team that will undertake greater supervision of Station staff handling all of Entravision's OPIFs, including for the Station.[14]

III. DISCUSSION

6. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $18,000.[15] The Licensee failed to upload in a timely manner to the Station's OPIF copies of the Station's Issue/Programs lists for fourteen quarters, as well as copies of the Station's Children's Television Programming Reports for three quarters. These late filings constitute an apparent willful and repeated violation of subsections 73.3526(e)(11)(i) and 73.3526(e)(11)(iii) of the Rules.[16]

7. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[17] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[18] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,[19] and the Commission has so interpreted the term in the section 503(b) context.[20] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[21]

8. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $10,000 for public file violations.[22] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[23]

9. In this case, the Licensee failed to timely upload to its OPIF issue/programs lists for fourteen quarters in violation of section 73.3526(e)(11)(i) of the Rules, and its Children's Television Programming Reports for three quarters in violation of section 73.3526(e)(11)(i) of the Rules.[24] The

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[14] Renewal Amendment at 2.

[15] Our action today addresses known apparent violations from the date the prior license renewal application was granted (April 9, 2013) through the adoption date of this item. Any violations that are discovered or may occur following the adoption date of this item and prior to the grant of the current Renewal Application would be separate violations and potentially subject to additional Commission action.

[16] *See* 47 CFR § 73.3526(e)(11)(i).

[17] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[18] 47 U.S.C. § 312(f)(1).

[19] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[20] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[21] 47 U.S.C. § 312(f)(2).

[22] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[23] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[24] *See* 47 CFR §§ 73.3526(e)(11)(i), 73.3526(e)(11)(iii).

Licensee notes several factors that led to the late filing of these reports, and states that doing so was an inadvertent failure resulting from confusion as to operating responsibilities.[25] We note that inadvertence is, "at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."[26] Furthermore, the Commission was abundantly clear that under a channel-sharing arrangement, each licensee maintains its own individual license and has an independent obligation to comply with all pertinent statutory requirements and our rules.[27] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[28] we find that under the facts of this case an upward adjustment from the base amount to $18,000 is appropriate for the Licensee's apparent failure to timely upload its issues/programs lists and Children's Television Programming Reports on multiple occasions, with a majority of the documents being placed in the Station's OPIF over a year late. Accordingly, the Licensee is liable for a total proposed forfeiture amount of $18,000.

10. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[29] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[30] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[31]

11. We find that the Licensee's apparent violation of subsections 73.3526(e)(11)(i) and 73.3526(e)(11)(iii) of the Rules[32] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[33] Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

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[25] *See*, *e.g.*, Renewal Amendment at 2.

[26] *Southern California*, 6 FCC Rcd at 4387, para. 3.

[27] *See Expanding Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268, 29 FCC Rcd 6567, 6853, para. 700 (2014); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 30 FCC Rcd 14927, 14940, para. 27 (2015); *Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637, 2653-54, para. 30 (2017).

[28] *Supra* note 23.

[29] 47 U.S.C. § 309(k).

[30] 47 U.S.C. § 309(k)(1).

[31] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[32] 47 CFR § 73.3539(a).

[33] For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[34] and sections 1.80 and 0.283(d) of the Commission's rules,[35] that Entravision Holdings, LLC, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of eighteen thousand dollars ($18,000)** for its apparent willful and repeated violation of subsections 73.3526(e)(11)(i) and 73.3526(e)(11)(iii) of the Commission's rules.[36]

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,[37] within thirty (30) days of the release date of this *NAL*, Entravision Holdings, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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),[38] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[39]

- 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).[40] 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.

[34] 47 U.S.C. § 503(b).

[35] 47 CFR §§ 1.80 and 0.283.

[36] 47 CFR §§ 73.3526(e)(11)(i), 73.3526(e)(11)(iii).

[37] 47 CFR § 1.80.

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

[39] 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.

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

Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[41] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

16. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[42] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[43]

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.[44]

[41] *See* 47 CFR § 1.1914.

[42] 47 CFR §§ 1.16 and 1.80(g)(3).

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

[44] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

18. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mark Boelke, Entravision Holdings, LLC, 2425 Olympic Boulevard, Suite 6000W, Santa Monica, CA 90404 and by electronic mail to mboelke@entravision.com. A copy shall also be sent to Station's representative, Ari Meltzer, by electronic mail to ameltzer@wiley.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: https://www.fcc.gov
TTY: 1-888-835-5322

DA 23-502
Released: June 12, 2023

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR JULY 10, 2023 STATUS UPDATE FILING OBLIGATION

WC Docket No. 18-89

The Wireline Competition Bureau (Bureau) reminds Recipients[1] in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file status updates with the Federal Communications Commission every 90 days, beginning on the date on which the Bureau approved Recipients' applications, until the obligation to file expires.[2] All Recipients were required to file the last status update on April 11, 2023.[3] Accordingly, all Recipients must file their next status update on July 10, 2023. For additional information about Reimbursement Program filing requirements, please refer to the *Initial Status Update PN*.[4]

Recipients will submit status updates through the online portal, https://fccprod.servicenowservices.com/scrp (Supply Chain Reimbursement Program Online Portal) by completing FCC Form 5640 Part K: Status Updates. Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18-89 in the Commission's Electronic Comment Filing System (ECFS), https://www.fcc.gov/ecfs.

[1] The Secure and Trusted Communications Networks Act of 2019, as amended, defines "recipient" as "any provider of advanced communications service the application of which for a reimbursement under the [Reimbursement] Program has been approved by the Commission, regardless of whether the provider has received reimbursement funds." Secure and Trusted Communications Act of 2019, Pub. L. No. 116-124, 134 Stat. 158, § 9(11) (2019) (codified as amended at 47 U.S.C. § 1608(11)), as amended by Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2021); *see also* 47 CFR § 1.50001(h) ("The term 'Reimbursement Program recipient' or 'recipient' means an eligible advanced communications service provider that has requested via application and been approved for funding in the Reimbursement Program, regardless of whether the provider has received reimbursement funds.").

[2] 47 CFR § 1.50004(k) (requiring Reimbursement Program recipients to "file a status update with the Commission 90 days after the date on which the Wireline Competition Bureau approves the recipient's application for reimbursement and every 90 days thereafter, until the recipient has filed the final certification").

[3] *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their April 11, 2023 Status Update Filing Obligation,* WC Docket No. 18-89, Public Notice, DA 22-1302 (WCB Mar. 13, 2023) (*April 2023 Status Update PN*). The *April 2023 Status Update PN* and other Reimbursement Program releases are available on the Commission's website via https://www.fcc.gov/supplychain/reimbursement.

[4] *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their Status Update Filing Obligation,* WC Docket No. 18-89, Public Notice, DA 22-967 (WCB Sept. 16, 2022) (*Initial Status Update PN*).

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-

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: June 12, 2023 **Released: June 12, 2023**

By the Mobility Division, Wireless Telecommunications Bureau:

1. By this Order, the Wireless Telecommunications Bureau (Bureau), Mobility Division, grants an extension of the relief provided by its May 30, 2023 Order (Order), which granted Federated Wireless a conditional emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules governing the Citizens Broadband Radio Service until June 13, 2023.[1] On June 8, 2023, Federated Wireless (Federated) requested a temporary extension of the relief granted in the Order until the earlier of July 28, 2023, or the restoration of reliable power and backhaul to Federated's impacted systems.[2] Federated explained that as of June 8, 2023, 50 percent of its ESC sites remained without power and that roughly half of Guam had yet to have power restored.[3] Federated indicated that the government of Guam hopes to restore power to the majority of the island within approximately the next month.[4] Further, Federated stated that backhaul at its ESC sites remains unstable as carriers work to stabilize their operations, which will likely persist until power is fully restored.[5] Given the continued lack of reliable power and backhaul to Federated's systems affected by Typhoon Mawar, we find that the bases for granting the conditional relief in Order remain equally applicable to the instant request. Accordingly, we find that it is in the public interest to extend the conditional relief granted in the Order until the earlier of July 28, 2023, or the restoration of reliable power and backhaul to Federated's impacted systems. All conditions contained in the Order shall continue to apply to this extension.

2. 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 modification of 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.

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[1] *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, Order, DA 23-453 (WTB May 30, 2023).

[2] *See* Expedited Request of Federated Wireless for Modification of Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed June 8, 2023) (Extension Request), https://www.fcc.gov/ecfs/document/10608256022946/1. The impacted systems are Dynamic Protection Areas (DPAs) Guam 1, 2, and the Apra Harbor DPAs, together with the affected ESCs in such DPAs, *Id*. at 1.

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

[4] *Id.* at 2.

[5] *Id.*

3. 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.

4. 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

PUBLIC NOTICE

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

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DA 23-504
Released: June 12, 2023

FCC ANNOUNCES THE EIGHTH MEETING OF THE COMMUNICATIONS SECURITY, RELIABILITY, AND INTEROPERABILITY COUNCIL VIII ON JUNE 26, 2023

This Public Notice serves as an announcement that, consistent with the Federal Advisory Committee Act,[1] the Federal Communications Commission (FCC or Commission) will hold the eighth and final meeting of the Communications Security, Reliability and Interoperability Councill VIII (CSRIC VIII or Council) on **Monday, June 26, 2023, beginning at 1:00 pm EDT, at the FCC, 45 L Street, N.E., Washington, D.C., and via video conference call.** The meeting is open to the public and will be streamed live at http://www.fcc.gov/live**.** Notice of this meeting was published in the Federal Register on May 23, 2023.[2]

CSRIC VIII's eighth meeting will include presentations and Council votes on three Reports: a Report on Best Practices to Mitigate Vulnerabilities in HTTP/2 and HTTP/3; a Report on Recommendations on the Role of the FCC in Promoting the Availability of Standards for More Secure, Reliable 5G Environment Through the Use of Virtualization Technology; and a Report on Recommended Best Practices to Improve Supply Chain Security of Infrastructure and Network Management Systems. This will be the final meeting of CSRIC VIII in keeping with its charter's expiration on June 29, 2023.

The CSRIC VIII meeting is open to the public in the Commission Meeting Room of the Federal Communications Commission, 45 L Street, N.E., Washington, D.C. While the CSRIC VIII 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. Members of the news media are welcome to attend the meeting.

The CSRIC VIII meeting will also be streamed via live feed at https://www.fcc.gov/live. 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), (202) 418-0432 (TTY). 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 fulfill 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.

More information about the CSRIC can be found at https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council-1. You may also contact Suzon Cameron, Designated Federal Official (DFO) for CSRIC VIII, at (202) 418-1916, or Kurian Jacob, Deputy DFO, at (202) 418-2040, or via the CSRIC e-mail account at CSRIC@fcc.gov.

–FCC–

[1] 5 U.S.C. §§ 1001-1014.

[2] Federal Communications Commission, Communications Security, Reliability, and Interoperability Council, Notice of Public Meeting, 88 FR 33145 (May 23, 2023).

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

ORDER

Adopted: June 13, 2023 **Released: June 13, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates Yellowhammer Networks, LLC (Yellowhammer) as an eligible telecommunications carrier (ETC) for purposes of receiving Rural Digital Opportunity Fund (RDOF) support, conditioned upon, and limited by, its authorization to receive this support, and effective only upon such authorization.[1] In making this ETC designation, the Bureau finds that Yellowhammer meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Federal Communications Commission (Commission) rules.[2] This conditional designation is dependent upon the Bureau's authorizing Yellowhammer.

II. BACKGROUND

A. Section 214 Transfer of Assets to Yellowhammer

2. The Bureau takes this action in conjunction with the Bureau's approval of an application filed by BroadLife Communications, Inc. (BroadLife) and Yellowhammer, pursuant to section 214 of the Act, and sections 63.03-04 of the Commission's rules,[1] requesting consent for the transfer of certain assets from BroadLife to Yellowhammer, including RDOF support.[3] 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 Alabama (Assigned Census Blocks).[4] Pursuant to the terms of the approved

[1] *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).

[2] 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

[3] *See Domestic Section 214 Application Granted for the Acquisition of Certain Assests of BroadLife Communications, Inc. by Yellowhammer Networks, LLC*, WC Docket 23-23, Public Notice, DA 23-473 at 4 (WCB rel. June 1, 2023) (*214 Transfer Public Notice*); 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), *as supplemented*, Letter from Stephen Coran, Counsel to Yellowhammer Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-23 (filed Feb. 15, 2023).

[4] Application 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
(continued….)

transaction, Yellowhammer will receive all RDOF support associated with this award (net of the RDOF support equal to the amount of state and federal income tax owed on the RDOF support received by BroadLife in 2022), subject to and limited by its future authorization.[5] In its Application, BroadLife states that it will take steps to relinquish its ETC designation after consummation of the transaction.[6]

B. Lifeline Requirements

3. The Lifeline program provides support to reimburse providers for offering supported services at discounted prices to qualifying low-income households, with more support available for households on Tribal lands.[7] Eligible services include voice and broadband Internet access service meeting certain requirements.[8] In a given geographic area, a carrier may be designated as an ETC and become eligible to receive funding from both the high-cost and low-income components of the Universal Service Fund (USF).[9] All ETCs must offer Lifeline-supported services throughout their designated service areas.[10]

C. Requirements for FCC ETC Designation

4. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support."[11] Under section 214(e), an ETC is a "common carrier" that "offer[s] the services that are supported by the Federal universal service support mechanisms under section 254(c),"[12] as established by the Commission.[13] A petitioner offering voice service, regardless of the technology used to provision that

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Applicants and Winning Bids) (WCB/OEA/RBATF Apr. 15, 2022) (*RDOF Public Notice*). 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.*

[5] *See* Application at 8-9.

[6] *See id*. at 9.

[7] *See Lifeline and Link Up Reform and Modernization et al*., WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012).

[8] *Lifeline and Link Up Reform and Modernization et al*., WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3972, paras. 30-32 (2016) (*Lifeline Modernization Order*).

[9] *Id.* at 3974, 4074-75, paras. 35, 311-12 (requiring all high-cost support recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

[10] *See* 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); *see also Lifeline Modernization Order*, 31 FCC Rcd at 3972, 4071-72, paras. 30-32, 297, 299-301.

[11] 47 U.S.C. § 254(e).

[12] *Id*. at § 214(e); *id.* § 153(11) (defining "common carrier" or "carrier" in relevant part, as "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").

[13] 47 U.S.C. § 254(c). Section 254(c) requires that the Commission "establish periodically," the services supported by universal service, "taking into account advances in telecommunications and information technologies and services." *Id.* The Commission has defined voice as the only supported service. 47 CFR § 54.101(a). This definition is "technologically neutral," allowing "ETCs to provision voice service over many platforms." *Connect*
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service, may be treated as a "telecommunications carrier" under Title II of the Act (and so become eligible to receive an ETC designation) if it "voluntarily 'holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements.'"[14]

5. Section 214 of the Act gives primary authority for ETC designations to state commissions.[15] The Commission has authority to designate a carrier as an ETC only when "a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."[16] The petitioning carrier must demonstrate that the Commission has jurisdiction and may do so by submitting an "affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."[17] However, "[i]f a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff [will] consider such a statute relevant" in determining Commission jurisdiction.[18]

6. A petition for ETC designation by the Commission must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act (which service must be offered on a common carriage basis); (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;[19] (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;[20] (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;[21] and (5) a certification that neither the petitioner, nor any party to

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America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692, paras. 77-78 (2011).

[14] *IP-Enabled Services; E9-1-1 requirements for IP-Enabled Service Providers,* WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10268, para. 38 n.128 (2005), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

[15] 47 U.S.C. § 214(e)(2) (providing, in relevant part, that a state commission "shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission"); *id*. § 214(e)(1) (providing that "a common carrier designated under section 214(e)(2), (3), or (6) . . . shall, throughout the service area for which the designation is received—(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title").

[16] *Id.* § 214(e)(6).

[17] *Federal-State Joint Board on Universal Service et al*., CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000); *see* 47 U.S.C. § 214(e)(6).

[18] *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6697 (WCB 2018) (*Phase II Auction ETC Guidance Public Notice*). The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests. *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications* Act, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

[19] 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

[20] 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

[21] An ETC's "service area" is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC's service area and an incumbent rural telephone company's service area, the Commission has separately forborne from imposing such requirements on RDOF support recipients. *See RDOF Order*, 35 FCC Rcd at 728, paras. 93-94.
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the petitioner's application for any new, modified, and/or renewed instrument of authorization from the Commission, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.[22]

7. In addition, a petitioner must demonstrate its ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive RDOF support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.[23]

8. Prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must also determine whether such designation is in the public interest.[24] When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner's service offering.[25]

D. Petition for ETC Designation

9. We specify that Yellowhammer's ETC designation will cover all eligible census blocks covered by the BroadLife RDOF award (as published by the Commission on its website) and assigned to Yellowhammer, subject to and limited by its authorization to receive support (designated service area).[26] On March 10, 2023, the Bureau released a Public Notice seeking comment on the Application and the Petition.[27] The Bureau did not receive comments or petitions in opposition to the Petition.

III. DISCUSSION

10. After considering all arguments raised in the comments, we find that Yellowhammer has satisfied the statutory requirements of sections 254 and 214(e) of the Act for designation as an ETC, and the Commission's requirements for ETC designation. We therefore designate Yellowhammer as an ETC in the designated service area. In this area, Yellowhammer must meet RDOF requirements, Lifeline

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These waivers are predicated upon the finding that the need for such requirements is obviated by the specific service quality standards applicable to support recipients and specific reporting obligations relating to such standards.

[22] 21 U.S.C. § 862; 47 CFR § 1.2002(a)–(b).

[23] 47 CFR § 54.202(a). We note that, for petitioners seeking ETC designation for the purpose of becoming authorized to receive RDOF support, the Commission has waived certain section 54.202 requirements, including the requirement that the petitioner submit a five-year service plan and proof of compliance with consumer protection and service quality standards. *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888, 13901 n.71 (RBATF, OEA, WCB 2020) (extending to RDOF long form applicants the same waivers of section 54.202 requirements as provided to Auction 903 long form applicants under the same rationales); *Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6699-700; 47 CFR §§ 54.804, 54.806. Because Yellowhammer is subject to RDOF reporting obligations and other requirements pursuant to this designation conditioned upon its authorization for RDOF support, we extend this same waiver to Yellowhammer.

[24] 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

[25] *See, e.g.*, *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

[26] *See* Results, Long-Form Applicants Spreadsheet at https://www.fcc.gov/auction/904/round-results.

[27] *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).

requirements, and other service obligations attendant to its high-cost designation, as specified in the Act and the Commission's rules.[28]

A. Satisfaction of ETC Requirements

11. *Commission Authority*. Yellowhammer demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. It has submitted an affirmative statement from the Alabama Public Service Commission declining to assert jurisdiction over this ETC designation in the designated service area because state regulation specifically excludes from state jurisdiction the regulation of broadband and Voice over Internet Protocol (VoIP) services (the services that Yellowhammer will use to meet its public interest obligations).[29] Accordingly, we find that the Bureau, acting under the Commission's delegation of authority, may designate Yellowhammer as an ETC upon a finding that Yellowhammer meets all eligibility requirements for ETC designation.

12. *Offering the Service Supported by the Universal Service Support Mechanisms*. Yellowhammer establishes through the required certifications and related filings that it qualifies as a telecommunications provider for purposes of receiving universal service support for which it may become eligible pursuant to the requested designation and that it will offer the service supported by the federal universal service support mechanisms.[30] Specifically, Yellowhammer has committed to offering voice service on a common carrier basis and has specified that its voice service meets the requirements of section 54.101(a) of the Commission's rules.[31] Yellowhammer must offer this service as of the first day of the month following the authorization.[32]

13. *Compliance with the Service Requirements Applicable to RDOF Support Recipients*. Yellowhammer establishes its ability to comply with service requirements applicable to the support that it receives.[33] This determination takes into account the findings in this Public Notice that Yellowhammer has demonstrated the technical and financial ability to provide voice and broadband services meeting or exceeding RDOF standards, its commitment to meeting relevant public interest obligations, and its commitment to complying with all statutory and regulatory requirements for receiving universal service support.[34] As a condition of authorization, Yellowhammer must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.[35]

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[28] 47 CFR § 54.202(a)(1)(i); *id*. § 54.101.

[29] ETC Petition at 5; *id.* at 35, Exh. 5, Copy of Letter from Alabama Public Service Commission (Letter from John A. Gardner, Exec. Dir., Alabama Public Serv. Comm'n, to Penalba de las Heras, Yellowhammer Networks, LLC (Jan. 3, 2023) (declining to exercise jurisdiction over Yellowhammer's ETC designation)); *see also* Ala. Code § 37-2A-4 (stating that "the [Alabama Public Service Commission] shall not have any jurisdiction, right, power, authority, or duty to regulate, supervise, control, oversee, or monitor, directly or indirectly, the rates, charges, classifications, provision, or any aspect of broadband service, broadband enabled services, VoIP services, or information services").

[30] ETC Petition at 6-9; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

[31] ETC Petition at 6-9; 47 U.S.C. § 214(e)(1), (6); 47 CFR § 54.101(a) (eligible voice telephony service must provide voice grade access to the public switched telephone network or its functional equivalent).

[32] *See Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 745, para. 139 (2020) (*RDOF Order*) (stating that a newly-authorized recipient of RDOF support should be prepared to provide voice service throughout its service areas, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of the month after authorization).

[33] ETC Petition at 6-7; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

[34] 47 CFR § 1.21001(b)(6).

[35] *Id*. § 54.806 (providing that RDOF support recipients are subject to sections 54.313, 54.314, and 54.316 of the Commission's rules); *id*. § 54.313 (requiring annual report including certifications as to rates, functionality, and

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14. *Compliance with Service Requirements Applicable to Lifeline Services*. Yellowhammer commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.[36] We emphasize that all ETCs receiving Lifeline support must report certain information to the Commission, the Universal Service Administrative Company (USAC), and the local regulatory authority, pursuant to section 54.422 of the Commission's rules.[37]

15. *Offering the Supported Services Using a Carrier's Own Facilities*. Yellowhammer certifies that it will offer supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.[38] Facilities are the ETC's "own" if the ETC has an exclusive right to use the facilities to provide the supported services or when service is provided by any affiliate within the same holding company structure.[39] An ETC may satisfy its obligation to "offer" supported voice service (or its functional equivalent, including interconnected VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.[40] Instead, the ETC must remain legally responsible, through a managed service solution, for ensuring that the service meets consumer protection and service quality standards.[41]

16. *Advertising Supported Services*. Yellowhammer commits to advertising the availability of the supported services and related charges using media of general distribution.[42] We emphasize that, as part of this commitment, Yellowhammer must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.[43]

17. *Ability to Remain Functional in Emergency Situations*. Yellowhammer states that it can remain functional in emergency situations.[44] Yellowhammer states that it has sufficient back-up power to

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deployment, among other things); *id*. § 54.314 (requiring annual certification stating that all federal high-cost support provided was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended); *id*. § 54.316 (requiring build-out milestone reporting).

[36] ETC Petition at 8; 47 CFR § 54.400 *et seq*.

[37] 47 CFR § 54.422; *see also id*. § 54.410.

[38] ETC Petition at 9; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

[39] *See Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6698; *see also* 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

[40] *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699 (citing *Connect America Fund et al*., WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1387-88, para. 20 (2018) (rejecting arguments contending that "because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service," and requiring carriers to "offer VoIP over their broadband network on a standalone basis")); *cf. Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7224 n.21 *(*WCB 2013) (explaining that a broadband provider would be considered to be providing voice service if it did so through an affiliated competitive local exchange company or "through a managed voice solution obtained from a third party vendor … , so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers")).

[41] *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699.

[42] ETC Petition at 9-10; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

[43] 47 CFR § 54.405.

[44] ETC Petition at 8-9.

ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.[45]

18. *Anti-Drug Abuse Act Certification*. Yellowhammer submits a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.[46]

B. Public Interest Analysis

19. Based on the information, representations, and certifications in the Petition and consistent with the Bureau's findings in the *214 Transfer Public Notice*, we find that Yellowhammer has demonstrated that its designation as an ETC serves the public interest and would provide numerous benefits to consumers.[47] Long-standing Commission precedent has explained that the public interest inquiry in the ETC context is a cost-benefit analysis focusing on the petitioner's efficiencies, the benefits of competition, the public benefits of service, and the fundamental principles of USF, all of which we find were sufficiently addressed in the Application.[48] The Bureau has determined that service to the designated service area will bring social and economic benefits in terms of access to advanced services meeting specific performance requirements.[49] In addition, Yellowhammer will provide service and meet program requirements, subject to close oversight[50] and default consequences and forfeiture penalties;[51] this helps ensure that Yellowhammer will meet its obligation to provide ubiquitous service throughout the study area at rates and on terms that are reasonably comparable to those associated with comparable service offerings in urban areas.

20. In conclusion, and based on the information, representations, and certifications in its ETC Petition, we find that Yellowhammer has met all applicable conditions and prerequisites for ETC designation and that designation serves the public interest. Accordingly, we designate Yellowhammer as an ETC for purposes of becoming eligible to receive RDOF support associated with the designated service area.

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[45] *Id*.; 47 CFR § 54.202(a)(2).

[46] ETC Petition at 10-11; 47 CFR § 1.2002.

[47] ETC Petition at 10.

[48] *See Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6388-89, para. 40 (2005) ("The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas."); *id*. at 6389, para. 41 (where the Commission has jurisdiction, it will conduct a cost-benefit analysis that includes consideration of a variety of factors, including "the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.").

[49] *See 214 Transfer Public Notice* at 3-4.

[50] *See RDOF Order*, 35 FCC Rcd at 702-04, paras. 31-36 (setting public interest obligations for RDOF support recipients); *id*. at 709-712, paras. 45-55 (adopting service milestone requirements); *id*. at 712-713, paras. 56-57 (adopting reporting requirements); 47 §§ CFR 54.802, 805-806.

[51] *See RDOF Order*, 35 FCC Rcd at 713-716, paras. 58-64 (adopting non-compliance measures); id. at 715-716, para. 63 (stating that in addition to default consequences, RDOF support recipients are subject to sanctions "including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment"); 47 CFR §§ 54.320(c), 54.803(c).

C. Regulatory Oversight

21. Under section 254(e) of the Act, an ETC must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[52] Under section 214(e) of the Act, an ETC must provide supported services throughout the designated service area for which it receives an ETC designation.[53] When and if the ETC is authorized to receive high-cost support, it must file an annual certification for each state in which it receives support that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.[54] The Commission conditions future support awarded through the high-cost program on the filing of such certification.[55]

22. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its qualifying voice or broadband services by the amount of the support for the eligible consumer.[56] In addition, it must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.[57]

23. We find that reliance on Yellowhammer's commitments to meet these and other regulatory requirements in its Application, as well as representations and commitments made in its ETC Petition, is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Yellowhammer and will commit to satisfying its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

24. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support received is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas for which the relevant ETC(s) have been designated.[58] The ETC must provide such records and documentation to the Commission and USAC upon request.[59] If Yellowhammer fails to fulfill the requirements of the Act, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.[60] The Commission also may assess forfeitures for violations of Commission rules and orders.[61] We note that the Commission has recently announced a new program, the Rural Broadband Accountability Plan (RBAP), that will increase audits, verifications,

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[52] 47 U.S.C. § 254(e).

[53] *Id*. § 214(e).

[54] 47 CFR § 54.314(b).

[55] *Id*.

[56] *See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

[57] 47 CFR § 54.422(b)(3); *see also id*. §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that it will comply with all federal Lifeline certification procedures).

[58] 47 U.S.C. §§ 220, 403.

[59] 47 CFR § 54.417.

[60] *Id*. § 54.806(b) (providing that RDOF support recipients are subject to the compliance measures, recordkeeping requirements, and audit requirements set forth in section 54.320(a)-(c) of the Commission's rules); *id*. § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

[61] *See* 47 U.S.C. § 503(b).

and transparency for USF high-cost programs, including RDOF.[62] With the establishment of RBAP, RDOF recipients, like other high-cost recipients, will be subject to a high level of accountability as they work to meet applicable performance requirements and benchmarks.

25. As the Bureau has previously explained, a carrier that cannot appropriately use universal service support must relinquish its ETC designation pursuant to section 214(e)(4) of the Act and section 54.205 of the Commission's rules.[63] For ETCs designated by the Commission, the ETC must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission's Electronic Comment Filing System (ECFS). The Bureau will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.[64] The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at hcorders@usac.org. A carrier that intends to discontinue service must first seek authorization to discontinue service under section 63.71 of the Commission's rules.[65] In addition, 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 (including any authorization to receive RDOF support) 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.[66] Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.[67] 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.

IV. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, Yellowhammer Networks LLC IS DESIGNATED an Eligible Telecommunications Carrier in its designated service area.

27. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the Universal Service Administrative Company and to the Alabama Public Service Commission.

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[62] Fact Sheet: Rural Broadband Accountability Plan (rel. Jan. 28, 2022).

[63] *Id*. § 214(a); 47 CFR § 54.205. *See, e.g.*, *Connect America Phase II Support Authorized for Six Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 12869, 12874 (RBAFT, OEA, WCB 2020) (summarizing ETC obligations relating to relinquishment); *Connect America Phase II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, 4720-30 (RBAFT, OEA, WCB 2019).

[64] 47 U.S.C. § 214(e)(4).

[65] 47 CFR § 63.71.

[66] 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.04; *Connect America Phase II Support Authorized for Six Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 12869, 12874-75 (RBAFT, OEA, WCB 2020) (summarizing ETC obligations relating to transfers of control); *Connect America Phase II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, 4730 (RBAFT, OEA, WCB 2020). Regardless of whether a long-form applicant has received ETC designation during the resubmission period, transfers of control constitute major modifications requiring waiver. Absent such waiver, the application may be dismissed. 47 CFR § 1.21001(d)(5) (prohibiting major modifications to an application during a resubmission period, including any changes in the ownership of the applicant that constitute an assignment or transfer of control); *RDOF Procedures Public Notice*, 35 FCC Rcd at 6140-41, para. 182 n.407.

[67] 47 CFR § 63.24.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-506
Released: June 13, 2023

UNIVERSAL LICENSING, TOWER CONSTRUCTION NOTIFICATION, E-106, AND ANTENNA STRUCTURE REGISTRATION SYSTEMS UNAVAILABLE; FILING DEADLINES EXTENDED

The Federal Communications Commission's Universal Licensing System (ULS), Tower Construction Notification System (TCNS), E-106 System, and Antenna Structure Registration System (ASR) have been unavailable since approximately 6:30 p.m. EDT on Friday, June 9, due to technical issues that the agency anticipates resolving in the near term. By this Public Notice, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau provide initial guidance regarding affected filing deadlines and review periods, as well as resources available for emergency authorization requests. The Bureaus will provide further guidance, including specific deadlines, by issuing another Public Notice once these systems are operational. The Commission is otherwise operating normally, staff of the affected Bureaus are available for relevant inquiries, and the FCC's 24/7 Operations Center remains open and available at (202) 418-1122.

Extension of Deadlines for Regulatory Filings in ULS and ASR: Because parties have not and will not be able to make electronic filings or view the contents of the affected systems while they are unavailable, we are extending the filing deadlines for all regulatory filings that needed to be or will need to be made in these systems starting June 9, 2023 and until the Commission announces normal ULS operations, for at least three business days after access to the systems resumes. We hereby waive the Commission's rules to the extent necessary to effectuate this extension. This Public Notice affects only the due dates for filings with the Commission that were or are scheduled to be made in the affected systems during the period while they are unavailable, as described in the preceding paragraph. We are not automatically extending the deadlines for any comment or filing periods that occur outside of this time period, but we will consider whether it is appropriate to do so once normal operations resume, and requests for extension of time will be considered consistent with the Commission's normal practice.

Pausing of Historic Preservation Review Periods: For any review periods based on filings made in the TCNS and E-106 systems that were or are in progress during the period of unavailability, those review periods are paused while the systems are unavailable. Accordingly, review periods will resume when the systems become available.[1]

[1] During the period that the E106 system is not in operation, FCC Forms 620 and 621 may be submitted directly to the State Historic Preservation Officer (SHPO) as provided in the Nationwide Programmatic Agreement (NPA), 47 CFR Part 1, App. B, to the extent it is the SHPO's practice to accept such filings. The deadlines set forth in the NPA for responses to the applicant or the SHPO shall be measured from the date of filing with the SHPO.

Responsive Pleadings: To the extent the due dates are extended by this Public Notice for filings to which reply or responsive pleadings are allowed, the due dates for those reply or responsive pleadings shall be extended by at least three business days after the affected systems are available.

Statutory Filing Deadlines: The Commission cannot waive statutory filing deadlines such as those associated with petitions for reconsideration. For the purpose of any applicable statutory deadlines to any filings required to be made in the affected systems, we consider the Commission to have been closed for the filing of documents in these systems beginning at 5 p.m. EDT on Friday, June 9, 2023.[2] The Commission will issue a Public Notice at a later date announcing when the Commission is open for the filing of documents with statutory deadlines in the affected systems, including the deadline by which such documents must be filed to be deemed to satisfy the statutory deadline. We do not extend the due dates for responsive pleadings to such filings (which will be due as though the filings were made on the statutory due date) but will consider requests for extension of time consistent with the Commission's normal practice.

Mandatory Electronic Filings: Because we are extending the due dates for all filings impacted by the unavailable systems, the Commission will not accept paper filings in lieu of filings that, by rule, may only be made in one of the affected systems, whether or not accompanied by a request for waiver of the electronic filing requirement.

Special Temporary Authority (STA): Any STAs expiring on June 9, 2023 and until the Commission announces normal ULS operations, are extended for at least three business days after ULS becomes available again. While ULS is unavailable, all emergency STA requests should be submitted through the Electronic Comment Filing System (ECFS) pursuant to the instructions described in DA 20-463 for filing market-based STAs. Emergency STA requests can also be processed through the FCC Operations Center, (202) 418-1122, while ULS and other online resources are unavailable. All emergency STA requests should provide the emergency nature of the request, the technical parameters of the proposed operation, and a point of contact. These requests will be handled as expeditiously as possible.

Fee Payments: The FCC's Commission Registration (CORES) System is unaffected and will remain operational and available to pay any regulatory fee or application fee payments during this period.

Other Due Dates: This Public Notice affects only the due dates for filings with the Commission that are required to be made in the affected systems that would have been due during the time period discussed above, and related responsive pleadings. It does not affect the effective dates of Commission actions or other events, or dates for filings with entities other than the Commission, even if such filings are also made with the Commission.

For these purposes, and to the extent necessary, Section 1.4(j) of the Commission's rules, 47 CFR § 1.4(j), which would otherwise require filings to be made on the first business day of resumed Commission operations, is hereby waived.[3]

[2] 47 CFR § 1.4(e)(1).

[3] Although the Commission will not be closed for business during this time period, some of the systems used by the public and by the staff will be unavailable as a practical matter. Section 1.4(j) of the rules provides that filings due on a holiday "shall be filed the next business day." 47 CFR § 1.4(j). Rule 1.4(e)(1) defines "holiday" to include any (continued….)

Pursuant to 47 CFR § 1.3, and their respective delegated authorities, this Public Notice is issued by the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau.

Applicants and licensees with questions may contact FCC Licensing Support via the web or phone at the contact information available on the following page: https://www.fcc.gov/wireless/available-support-services.

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(Continued from previous page)
day on which the Commission's headquarters are closed "due to adverse weather, emergency or other closing." 47 CFR § 1.4(e)(1).

PUBLIC NOTICE

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

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

DA 23-507
Released: June 14, 2023

Proposed Third Quarter 2023 Universal Service Contribution Factor

CC Docket No. 96-45

In this Public Notice, the Office of Managing Director (OMD) announces that the proposed universal service contribution factor for the third quarter of 2023 will be 0.292 or 29.2 percent.[1]

Rules for Calculating the Contribution Factor

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

USAC Projections of Demand and Administrative Expenses

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

[1] *See* 47 C.F.R. § 54.709(a).

[2] *See id.*

[3] *See* 47 C.F.R. § 54.709(a)(2).

[4] *See* 47 C.F.R. § 54.709(a)(3).

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

[6] *See* 47 C.F.R. § 54.619(a)(5).

USAC to apply $104.40 million of the $211.50 million in unused funds to offset the $170.59 million projected Rural Health Care program demand. This offset reduces the third quarter 2023 contribution factor to a level below what the contribution factor would be based on USAC's filings.[8]

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

($ millions)

Program Demand	Projected Program Support	Admin. Expenses	Application of True-Ups & Adjustments	Total Program Collection (Revenue Requirement)
Schools and Libraries	568.04	19.66	(0.93)	586.77
Rural Health Care	59.49	6.70	(0.02)	66.17
High-Cost	1,049.60	17.95	(23.40)	1,044.15
Lifeline	261.62	23.65	(78.30)	206.97
Connected Care	8.33	0.08	(0.03)	8.38
TOTAL	1,947.08	68.04	(102.68)	1,912.44

USAC Projections of Industry Revenues

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

Total Projected Collected Interstate and International End-User Telecommunications Revenues for Third Quarter 2023: $8.534206 billion.

Adjusted Contribution Base

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

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

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

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

Adjusted Quarterly Contribution Base for Universal Service Support Mechanism

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

= ($8.534206 billion – $1.912440 billion) * 0.99

=$6.555548 billion.

Unadjusted Contribution Factor

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

Contribution Factor for Universal Service Support Mechanisms

Total Program Collection / Adjusted Quarterly Contribution Base

=$1.912440 billion / $6.555548 billion

=0.291728

Unadjusted Circularity Factor

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

Unadjusted Circularity Factor for Universal Service Support Mechanisms

= Total Program Collection / Projected Third Quarter 2023 Revenues
= $1.912440 billion / $8.534206 billion
= 0.224091

Proposed Contribution Factor

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

29.2%

Proposed Circularity Discount Factor

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

0.224813[12]

Conclusion

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

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

[11] *Id*.

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

[13] *See* 47 C.F.R. § 54.709(a)(3).

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

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

We also emphasize that carriers may not mark up federal universal service line-item amounts above the contribution factor.[16] Thus, carriers may not, during the third quarter of 2023, recover through a federal universal service line item an amount that exceeds 29.2 percent of the interstate telecommunications charges on a customer's bill.

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

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

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[15] *See* 47 C.F.R. § 54.713.

[16] *See* 47 C.F.R. § 54.712.

[17] *See* 47 C.F.R. § 54.706.

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

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

PUBLIC NOTICE

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

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

DA 23-508
Released: June 14, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF KENNEBEC TELEPHONE COMPANY, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-152

Comments Due: June 28, 2023
Reply Comment Due: July 5, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by the Estate of Rodney Bowar (Estate), Chaz Bowar, and the Tiarra Bowar-Choal Trust (Trust) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to the transfer control of Kennebec Telephone Company, Inc. (Kennebec) to Chaz Bowar and to Tiarra Bowar-Choal (including as the sole beneficiary of the Trust).[2]

Kennebec, a South Dakota corporation, provides incumbent local exchange carrier service to approximately 558 access lines in in two rural exchanges in Lyman County, South Dakota. Kennebec is designated as an eligible telecommunications carrier by the South Dakota Public Utilities Commission.[3] Kennebec is currently held by The Estate of Rodney Bowar c/o Kennebec Telephone Company, Inc. (71.13%) and Donna Bowar Residuary Trust c/o Kennebec Telephone Company, Inc. (9.97%), both U.S. entities.[4] Chaz Bower and Nancy Bower currently control Kennebec in their capacity as Personal Representatives of the Estate of Rodney Bower while the estate is in probate.

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

[2] Applicants filed a supplement to their application on June 6, 2023. Letter from Chaz Bowar and The Tiarra Bowar-Choal Trust to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 23-152 (filed June 6, 2023). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Kennebec participates in the Lifeline program and the Affordable Connectivity Program and will continue to do so post-consummation.

[4] Chaz and Tiarra Bowar-Choal previously held a small percentage of shares individually, and the Donna Bowar Residuary Trust, which holds 9.97% of Kennebec's issued and outstanding shares, is also being distributed at this time, in equal measures, to Chaz and Tiarra Bowar-Choal individually.

Chaz Bower and Tiarra Bowar-Choal are both U.S. citizens, and The Tiarra Bowar-Choal Trust is a U.S. entity. Neither Chaz Bower, Tiarra Bowar-Choal, nor the Trust have a ten percent or greater interest in any other telecommunications service provider.

Upon consummation of the proposed transaction, the shares held by the Estate of Rod Bowar, which constitute a controlling interest in Kennebec, will be distributed equally to Chaz Bowar and Tiarra Bowar-Choal (including indirectly through the Trust). Chaz Bowar will directly hold a 48.61% interest in Kennebec in his individual capacity, while his sister Tiarra Bowar will directly hold a 13.04% interest in Kennebec, as well as a 35.57% indirect interest as the sole beneficiary of the Trust.

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity. We accept the application for filing under section 63.03(b)(1)(ii) of the Commission's rules.[5]

Domestic Section 214 Application Filed for the Transfer of Control of
Kennebec Telephone Company, Inc., WC Docket No. 23-152 (filed May 3, 2023).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before June 28, 2023**, and reply comments **on or before July 5, 2023**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.

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

1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a

[5] 47 CFR § 63.03(b)(1)(ii).

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[6] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Myrva Charles at (202) 418-1506 or Dennis Johnson at dennis.johnson@fcc.gov.

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[6] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-510
Released: June 14, 2023

WIRELINE COMPETITION BUREAU AUTHORIZES TRANSITIONAL MOBILE SUPPORT FOR CERTAIN PROVIDERS PARTICIPATING IN THE BRINGING PUERTO RICO TOGETHER FUND AND THE CONNECT USVI FUND

WC Docket Nos. 18-143, 10-90

In this Public Notice, the Wireline Competition Bureau (Bureau) authorizes high-cost mobile support funding for certain eligible facilities-based mobile providers that elected to receive transitional support as part of the Bringing Puerto Rico Together Fund and Connect USVI Fund.[1] Transitional support payments shall begin the month after the Universal Service Administrative Company (USAC) disburses the provider's final Stage 2 mobile support payment.

In the *PR-USVI Transitional Support Order*, the Federal Communications Commission (Commission) made available transitional support to current recipients of Stage 2 high-cost mobile support in Puerto Rico and the U.S. Virgin Islands to strengthen and harden 4G LTE and 5G-NR networks.[2] As the Commission explained in the *PR-USVI Transitional Support Order*, transitional support could last for up to 24 months.[3] Transitional support recipients will receive 50% of their current Stage 2 mobile support for the first 12 months of transitional support, and 25% of their current Stage 2 mobile support for the next 12 months of transitional support.[4]

On May 5, 2023, the Bureau released a Public Notice announcing May 22, 2023 as the deadline for providers to elect to receive transitional support.[5] Pursuant to the direction in the *PR-USVI Transitional Support Order*, a total of four[6] mobile providers elected to receive transitional support in Puerto Rico and the U.S. Virgin Islands. Each provider committed to meeting the requirements set forth in the *PR-USVI Transitional Support Order*.[7] At this time, the Bureau authorizes each provider to receive

[1] *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143, 10-90, Report and Order and Order on Review, FCC 23-32, at 13, paras. 35-36 (Apr. 19, 2023) (*PR-USVI Transitional Support Order*).

[2] *Id*. at 2, para. 2.

[3] *Id.* at 7, para. 19.

[4] *Id.* at 8-9, para. 23.

[5] *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143, 10-90, Public Notice, DA 23-363 (WCB May 5, 2023) (*Transitional Support Election Public Notice*).

[6] Letters from Carla Framil Ferran, General Counsel, Liberty Mobile Puerto Rico and Liberty Mobile USVI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, (filed May 8, 2023); Letter from Jorge Martel, Vice President, General Manager – Puerto Rico, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, (filed May 17, 2023); Letter from Francisco J. Silva, Secretary and General Counsel, Puerto Rico Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, (filed May 19, 2023); Letter from Shannon Temple, Compliance Manager, Vitelcom Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-143, (filed May 22, 2023) (Viya Wireless and Choice Communications Election Letter).

transitional support as set forth in the *PR-USVI Transitional Support Order*.[8] We direct USAC to disburse the allocated funding to the authorized ETCs identified in Attachment A of this Public Notice, consistent with the *PR-USVI Transitional Support Order*.

As provided in the *PR-USVI Transitional Support Order*, all Eligible Telecommunications Carriers (ETCs) receiving transitional mobile support are subject to ongoing oversight and must comply with annual reporting and certification requirements.[9] We also remind transitional support recipients that have not already submitted their Disaster Response and Recovery Plans that those Plans must be submitted, or transitional support may be withheld.[10] Transitional support recipients also must use the support "to improve the redundancy and resiliency of facilities for 4G LTE or better technologies, including the maintenance of backup power systems for such networks,"[11] comply with the existing Stage 2 performance and reporting requirements,[12] and submit network security reports.[13]

For additional information on this proceeding, contact Nathan Eagan (Nathan.Eagan@fcc.gov) or Dangkhoa Nguyen (Dangkhoa.Nguyen@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division.

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[7] Liberty Mobile elected to receive support in both Puerto Rico and the U.S. Virgin Islands.

[8] *PR-USVI Transitional Support Order* at 8-9, para. 23.

[9] *Id.* at 11-13, paras. 31-34.

[10] *Id*. at 11-12, 17, paras. 32, 49 & n.129; 47 CFR § 54.1524(a) (providing that Disaster Response and Recovery Plans must be submitted to the Bureau for approval by July 1, 2023).

[11] *PR-USVI Transitional Support Order* at 10, para. 27.

[12] *Id.* at 11-12, paras. 31-32.

[13] *Id*. at 12-13, paras. 33-34.

ATTACHMENT A

Uniendo a Puerto Rico Fund and Connect USVI Fund
Transitional Support Allocations

Uniendo a Puerto Rico Fund:

Provider	**Total Support: Months 1-12**	**Total Monthly Support: Months 1-12**	**Total Support: Months 13-24**	**Total Monthly Support: Months 13-24**
Liberty Mobile	$ 16,301,648	$ 1,358,470.67	$ 8,150,824	$ 679,235.33
PRTC	$ 12,761,527	$ 1,063,461.58	$ 6,380,763	$ 531,730.25
T-Mobile	$ 13,336,825	$ 1,111,402.08	$ 6,668,413	$ 555,701.42

Connect USVI Fund:

Provider	**Total Support: Months 1-12**	**Total Monthly Support: Months 1-12**	**Total Support: Months 13-24**	**Total Monthly Support: Months 13-24**
Liberty Mobile	$ 665,631	$ 55,469.25	$ 332,816	$ 27,735.66
Choice Communications	$ 50,915	$ 4,242.92	$ 25,457.5	$ 2,121.25
Vitelcom Cellular	$ 16,787.72	$ 1,398.98	$8,393.86	$699.49

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 23-511
Released: June 13, 2023

WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES CHALLENGE AND REPLY DATES FOR AMENDED PHASE II CERTIFICATION OF ACCELERATED RELOCATION

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

On May 15, 2023, the Wireless Telecommunication Bureau (Bureau) issued a Public Notice announcing its Phase II Certification of Accelerated Relocation procedures as well as implementation of the Commission's incremental reduction plan for Phase II Accelerated Relocation Payments (ARP) relating to the ongoing transition of the 3.7 GHz band (*Phase II Certification Procedures and Incremental Reduction PN)*.[1] The *Phase II Certification Procedures and Incremental Reduction PN* provided that if an eligible space station operator submits an amended or refiled Phase II Certification of Accelerated Relocation, the Bureau would issue a public notice establishing a new challenge cycle with respect to the issues raised in such amended or refiled Certification.[2]

On June 12, 2023, Satélites Mexicanos S.A. de C.V. d/b/a Eutelsat Americas ("Eutelsat") submitted an erratum to the Phase II Certification of Accelerated Relocation it filed on June 1, 2023.[3] Any challenge on issues raised in the Eutelsat erratum must be filed in GN Docket No. 23-97 on or before **June 23, 2023**; any replies must be filed in GN Docket No. 23-97 on or before **June 30, 2023**.

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

-FCC-

[1] *Wireless Telecommunications Bureau Announces Procedures for C-Band Phase II Certification of Accelerated Relocation and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments*, Public Notice, GN Docket Nos. 18-122 and 23-97, DA 23-408 (WTB May 15, 2023) (*Phase II Certification Procedures and Incremental Reduction PN)*; *see Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification*, 35 FCC Rcd 2343, 2456-57, at paras. 297-300 (2020).

[2] *Phase II Certification Procedures and Incremental Reduction PN* at 12, n.76 ("Thus, WTB would place the amended or refiled Certification on Public Notice for a new challenge cycle, *i.e.*, ten (10) days from the release of the Public Notice to file oppositions, and five (5) days to file replies.").

[3] Satélites Mexicanos S.A. de C.V. d/b/a Eutelsat Americas, Erratum, GN Docket Nos. 18-122 and 23-97 (filed June 12, 2023); Satélites Mexicanos S.A. de C.V. d/b/a Eutelsat Americas, Phase II Certification of Accelerated Relocation, GN Docket Nos. 18-122 and 23-97 (filed June 1, 2023).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-512
Released: June 14, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES FILING DEADLINES FOR OPPOSITIONS AND REPLIES THERETO REGARDING A PETITION FOR RECONSIDERATION OF THE 911 OUTAGE NOTIFICATION FOR PSAPS SECOND REPORT AND ORDER

PS Docket Nos. 15-80 and 13-75; ET Docket No. 04-35

Oppositions Due: June 26, 2023
Replies to Oppositions Due: July 5, 2023

By this *Public Notice*, the Public Safety and Homeland Security Bureau notifies interested parties of the filing deadlines for oppositions, and replies thereto, to a petition for reconsideration of the Second Report and Order on 9-1-1 outage notification for 9-1-1 special facilities, including Public Safety Answering Points (PSAPs) released on November 18, 2022.[1] The petition for reconsideration was filed by the Competitive Carriers Associations (CCA).[2]

The Bureau previously announced that oppositions to the petitions for reconsideration must be filed within 15 days after the date on which the Federal Register publishes notice of the filing of the petitions, and that replies to oppositions must be filed within 10 days after the time for filing oppositions has expired.[3] The Federal Register published notice of the filing of the petitions for reconsideration on June 9, 2023.[4] Accordingly, oppositions to the petitions are due on **June 26, 2023**, and replies to oppositions are due on **July 5, 2023**.

Filing Procedures. Oppositions and replies may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.[5] Oppositions and replies should refer to PS Docket Nos. 15-80 and 13-75; ET Docket No. 04-35.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.

[1] *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Improving 911 Reliability; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 15-80 and 13-75; ET Docket No. 04-35, Second Report and Order, FCC 22-88 (Nov. 18, 2022).

[2] Competitive Carriers Association, Petition for Reconsideration, PS Docket Nos. 15-80 and 13-75; ET Docket No. 04-35 (filed March 17, 2023), https://www.fcc.gov/ecfs/document/1031746539270/1.

[3] *See* 47 CFR § 1.429(f); 47 CFR § 1.429(g); *see also Petition for Reconsideration of Action in Proceeding*, PS Docket Nos. 15-80 and 13-75; ET Docket No. 04-35, Public Notice, Report No. 3195 (CGB May 31, 2023), https://docs.fcc.gov/public/attachments/DOC-393893A1.pdf.

[4] *See* Federal Communications Commission, Petition for Reconsideration, 88 Fed Reg. 37842 (Dec. 22, 2021).

[5] *See* Federal Communications Commission, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[6]
- 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.

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

Ex Parte Rules. This proceeding shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[7] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For additional information on this proceeding, contact James Wiley, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–1678, or by email to James.Wiley@fcc.gov, or Shabbir Hamid, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2328, or

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

[7] 47 CFR §§ 1.1200 *et seq.*

by email to Shabbir.Hamid@fcc.gov.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
The Rural Digital Opportunity Fund Auction (Auction 904)	)	AU Docket No. 20-34
	)	
	)	

ORDER

Adopted: June 14, 2023 **Released: June 14, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants Docomo Pacific, Inc.'s (DPAC) petition[1] requesting a six-month waiver of the Commission's requirement that Rural Digital Opportunity Fund auction (Auction 904) recipients obtain letters of credit (LOCs) from banks that maintain a Weiss bank safety rating of B- or better.[2] This waiver will allow DPAC, which provides service in Guam and the Northern Mariana Islands, to maintain its letter of credit with its current bank until December 6, 2023.

II. BACKGROUND

2. The Commission requires that before being authorized to receive support awarded by Auction 904, an applicant must obtain an LOC issued by a qualified bank to protect the public's funds.[3] To insure the availability of funds should the Commission need to draw against an LOC, the Commission has several eligibility criteria for banks issuing LOCs.[4] One of these requirements is that the issuing bank must maintain a Weiss bank safety rating of at least a B-. The Commission determined that Weiss provides "an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes," and that banks with a rating of B- or higher had shown that they "offer[] good financial security and ha[ve] the resources to deal with a variety of adverse economic conditions."[5]

[1] Docomo Pacific, Inc. Petition for Waiver, WC Docket No. 10-90, AU Docket No. 20-34 (filed June 6, 2023) (*DPAC Petition*).

[2] 47 CFR § 54.804(c)(2)(i)(B).

[3] 47 CFR § 54.804(c); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (*CAF Phase II Auction Order*); *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 729-35, paras. 96-112 (2020) (*Rural Digital Opportunity Fund Order*).

[4] 47 CFR § 54.804(c).

[5] *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

3. *DPAC's Petition*. In its petition, DPAC explains that it initially obtained an LOC from the Bank of Hawaii, which met the Commission's requirements at the time the LOCs were issued.[6] On May 5, 2023, DPAC received notice that its amended LOC from the Bank of Hawaii was no longer acceptable, because the Bank of Hawaii's Weiss bank safety rating had fallen below a B-.[7] DPAC moved to obtain a new LOC from a bank that meets Commission requirements. On May 24, 2023, Super-Typhoon Mawar made landfall in both Guam and the Northern Mariana Islands and caused significant destruction.[8]

4. In its petition, DPAC seeks a six-month waiver of the requirement that LOC issuing banks maintain a Weiss bank safety rating of at least a B- in order to obtain new LOCs from a bank that meets the Commission's requirements.[9] DPAC explains that, in the aftermath of the typhoon, it does "not have the resources to collaborate on creating a new letter of credit relationship at this time" with any other bank that provides services in Guam and the Northern Mariana Islands; moreover, any such bank is likely facing similar issues dealing with the aftermath of Super-Typhoon Mawar.[10] A six-month waiver would allow DPAC to maintain its existing LOC with the Bank of Hawaii while it obtains a new LOC from a bank that meets the Commission's requirements, and would allow DPAC to continue to receive Auction 904 support during the duration of the waiver.[11] In support of its petition, DPAC states that it has "maintained compliance with all RDOF rules and requirements" that are within its control,[12] and that, without a waiver, DPAC would face suspended support payments as it struggled to recover from a natural disaster.[13] DPAC also notes that a waiver would be consistent with our earlier, temporary waivers of the LOC rules to allow support recipients to obtain new LOCs from banks that met the Commission's requirements.[14]

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.[15] 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.[16] A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.[17] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[18] We find good cause to grant DPAC's petition and temporarily waive section 54.804(c)(2)(i)(B) of our rules until December 6, 2023. If at that time DPAC has not

[6] *DPAC Petition* at 2-3.

[7] *Id.* at 3.

[8] *Id.* at 4.

[9] *Id.* at 7.

[10] *Id.* at 4.

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

[12] *Id.* at 6.

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

[14] *Id.* at 5 (citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 22-951 (WCB Sept. 13, 2022) (Point Broadband Order); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-419 (WCB May 17, 2023) (ECFiber Order)).

[15] 47 CFR § 1.3.

[16] *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) (*WAIT Radio)*) (*Northeast Cellular*).

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

[18] *WAIT Radio*, 418 F.2d at 1157.

obtained LOCs for all of its Auction 904 awards from a bank that meets the Commission's requirements, we will suspend DPAC's monthly support payments and DPAC may be subject to additional non-compliance measures.[19]

6. We find that circumstances support a finding of good cause to grant the petition. DPAC states that it has complied with all Auction 904 rules, except for maintaining an LOC with a bank with an acceptable Weiss bank safety rating. Once DPAC was notified that it needed to obtain a new LOC from a different bank, it took steps to do so.[20] DPAC's ability to obtain a new LOC from an acceptable bank has been impeded by the destruction caused by Super-Typhoon Mawar,[21] and providing a temporary waiver will allow DPAC to continue to receive Auction 904 support as it, along with all of Guam and the Northern Mariana Islands, recovers from the Super-Typhoon's damage.

7. Granting DPAC a temporary waiver is also consistent with our precedent. We previously issued temporary waivers to allow Point Broadband and ECFiber to continue using their existing LOCs from banks with a Weiss safety rating of C+ in order to allow both providers to obtain new LOCs from a bank with an acceptable Weiss safety rating.[22] For the same reasons, and additionally because of the strain on resources caused by Super-Typhoon Mawar, we grant DPAC's request for a temporary waiver.

8. We emphasize, however, that auction support recipients must ensure that banks issuing LOCs comply with all of our eligibility rules. We rely on an independent standard to assess the stability of financial institutions because the Commission does not have the expertise to evaluate banks' financial health.[23] Additionally, we note that the bank that ultimately provides DPAC with its updated LOC must have a Weiss bank safety rating of B- or better.[24]

IV. ORDERING CLAUSES

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

10. IT IS FURTHER ORDERED that the petition for temporary waiver filed by Docomo Pacific, Inc. IS GRANTED.

[19] *See, e.g.*, 47 CFR §§ 54.320(c), 54.806(b); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107.

[20] *DPAC Petition* at 3.

[21] *Id*. at 6 (noting that "no businesses on the island [] are in a position to resume daily activities").

[22] *See generally* Point Broadband Order; ECFiber Order.

[23] *See CAF Phase II Auction Order*, 31 FCC Rcd at 5992-93, para. 126 (noting the importance of "maintaining objective criteria that will provide sufficient assurance that letters of credit issued [to Auction support recipients] will be honored").

[24] *See DPAC Petition* at 3, n.14 (noting that the bank from which DPAC planned to obtain its new LOC, after the Bank of Hawaii's Weiss bank safety rating fell below B-, also had its Weiss bank safety rating fall below a B-).

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 Bure

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 23-514
Released: June 14, 2023

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

WC Docket No(s). 23-186

Comments Due: June 29, 2023

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 Discontinuance Application(s) listed herein to be acceptable for filing and subject to the procedures set forth in Section 63.71 of the Commission's rules.[1] The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,[2] and section 63.71 of the Commission's rules,[3] to discontinue, reduce, or impair certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **July 15, 2023**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] *See* 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day… unless the Commission has notified the applicant that the grant will not be automatically effective.").

applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **June 29, 2023**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[5] Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[6] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.[7] Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or

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

[6] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[7] 47 CFR § 1.1200 *et seq*.

arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

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

For further information, please see the contact(s) for the specific discontinuance proceeding you are interested in as listed in the Appendix. For further information on procedures regarding section 214 please visit https://www.fcc.gov/encyclopedia/domestic-section-214-discontinuance-service.

– FCC –

Appendix

1) **Applicant(s): AT&T Services, Inc. on behalf of its affiliate, AT&T Corp. (AT&T)**
WC Docket No. 23-186, Comp. Pol. File No. 1848
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-186*%22))
Affected Service(s) – AT&T 56 or 64 Kbps Switched Digital Service
Service Area(s) – in the contiguous 48 United States, Hawaii, and the District of Columbia
Authorized Date(s) – on or after July 15, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: AT&T plans to grandfather the Affected Services as follows: effective July 15, 2023, AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes (including moves to different service addresses). AT&T states that, following the expiration of any current term agreement, it will provide the service on a month-to-month basis until it is discontinued (currently planned for July 15, 2024). AT&T adds that, during any month-to-month service period, it may change the rates, terms, and conditions upon notification.

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 23-515
Released: June 14, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF WINN TELEPHONE COMPANY D/B/A WINN TELECOM TO PENINSULA FIBER NETWORK, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-84

Comments Due: June 28, 2023
Reply Comment Due: July 5, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Winn Telephone Company d/b/a Winn Telecom (Winn Telecom) and Peninsula Fiber Network, LLC (PFN) (together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of Winn to PFN.[2]

Winn Telecom, a Michigan corporation, provides service as an incumbent local exchange carrier (LEC) in the Winn Exchange, and as a competitive LEC to residential and business customers in rural areas of 67 exchanges in the Lower Peninsula of Michigan.[3] Specifically, Winn Telecom provides local exchange, exchange access, tandem, domestic toll, SS7, Ethernet, and broadband Internet services.[4] Winn Telecom provides voice, data, and internet services, as well as high speed optical transport within its service territory. Winn Telecom, an eligible telecommunications carrier (ETC) in Michigan and NECA Rate-of-Return Cost Company, receives approximately $14, 419 a month in Connect America Fund Broadband Loop support and

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

[2] *See* Application for Assignment of Domestic Section 214 Authorization of Winn Telephone Co. d/b/a Winn Telecom to Peninsula Fiber Network, LLC, WC Docket No. 23-84 (filed Feb. 6, 2023) (Application). Applicants filed supplements to the Application on April 4, 2023 and May 24, 2023. Supplement to Application for Change of Control of Winn Telephone Co. d/b/a Winn Telecom to Peninsula Fiber Network, LLC, WC Docket No. 23-84 (filed Apr. 4, 2023) (April Supplement); Supplement to Application for Change of Control of Winn Telephone Co. d/b/a Winn Telecom to Peninsula Fiber Network, LLC, WC Docket No. 23-84 (filed May 24, 2023) (May Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 1-2, 8. Winn Telecom has a license to provide local exchange service to all zones and exchange areas in the state of Michigan, but does not provide services in all such exchanges. *Id*. at 2, 8.

[4] *Id*. at 8.

approximately $2,532 in high-cost loop support.[5] Winn Telecom is wholly owned by Winn Communications Co. (Winn Comm), a Michigan corporation that does not directly offer domestic telecommunications services.[6] There are no persons with a 10% or greater ownership in Winn Comm.[7]

PFN, a Michigan limited liability company licensed by the Michigan Public Service Commission, provides local exchange service, exchange access service, tandem services, domestic toll service, SS7, Ethernet, and broadband Internet service either directly or through various subsidiaries and affiliates, all in rural areas of the Upper Peninsula and the northern Lower Peninsula of Michigan.[8] PFN is the parent corporation of Alpha Connect, LLC,[9] a Michigan limited liability company, Huron Mountain Communications Co., a Michigan company, and Peninsula Fiber Network Next Generation Services (PFN Next Gen), LLC, a Michigan limited liability company.[10] PFN does not have a 10% or greater ownership interest in any other telecommunications provider.[11]

PFN is 50% owned by Baraga Telephone Company (Baraga),[12] a Michigan corporation, and 50% owned by Hiawatha Communications, Inc. (HCI),[13] a Michigan corporation.[14] Baraga and HCI also provide local exchange service, exchange access service, tandem services, domestic toll service, SS7, Ethernet, and broadband Internet service either directly or through various subsidiaries and affiliates, all in rural areas of the Upper Peninsula of Michigan.[15] Baraga has no subsidiaries and is a Rate-of-Return Average Schedule Company and a designated ETC receiving Rural Digital Opportunity Fund Phase I Auction (Auction 904) support and Alternative Connect America Model

[5] April Supplement at 2-3; May Supplement at 2. While Winn Telecom participates in the Lifeline program, it has no Lifeline subscribers. April Supplement at 4. It also participates in the Emergency Broadband Benefit Program and Affordable Connectivity Program. *Id*.

[6] Application at 8; April Supplement at 2.

[7] Application at 5; April Supplement at 5.

[8] Application at 2, 9.

[9] April Supplement at 2, 4.

[10] On March 4, 2021, the Michigan Public Service Commission approved Huron's voluntary relinquishment of its license to provide basic local exchange service as it no longer served any customers in Michigan. PFN Next Gen is authorized to provide basic local exchange service to all exchange areas and zones in the state of Michigan, and has filed tariffs to provide end-user local exchange service several exchanges of AT&T Michigan, Frontier North, Inc., Wolverine Telephone Co., and CenturyTel Midwest- Michigan, Inc. Application at 2, 9-10.

[11] April Supplement at 5.

[12] *Id*. at 2-3; May Supplement at 2.

[13] HCI is principally a holding company that owns the switch used by its subsidiaries, and provides executive functions to them, but does not offer domestic telecommunications services except through its subsidiaries. April Supplement at 6.

[14] Application at 3.

[15] *Id*. at 3, 10.

(ACAM) II support.[16] HCI, not a designated ETC, receives approximately $837,630 of ACAM funding.[17] HCI is the parent of three Michigan corporations that are local exchange service providers and ETCs in the Upper Peninsula of Michigan—Hiawatha Telephone Company (HTC), Midway Telephone Company (Midway), and Ontonagon County Telephone Company (Ontonagon).[18] HCI does not own a 10% or greater interest in any other telecommunications providers.[19] The ultimate persons with a 10% or greater ownership interest in PFN are Paul Stark (25.1%), the Paul W. Stark Children's Trust FBO Laura Stark Inal (21.84%), as shareholders of Baraga, and the Tidd Family Trust – Myrtle Tidd, Beneficial Owner (25%) and the Nebel Family Trust (25%) as shareholders of HCI. Neither Mr. Stark nor any of the three trusts own a 10% or greater interest in any other provider of telecommunications other than those identified above.[20] Additionally, there is no overlap in the service territories between PFN, its subsidiaries or parent companies, and Winn Telecom.[21]

Pursuant to the terms of the proposed transaction, PFN and Winn Comm entered into an Agreement and Plan of Merger to effectuate the transfer of control of Winn Comm and its subsidiaries to PFN. Applicants propose the transfer of control of the Section 214 authorization held by Winn Telecom, a subsidiary of Winn Comm, to PFN.[22] The proposed transaction will be effectuated through the acquisition by PFN of 100% ownership of Winn Comm through a "reverse triangular merger" in which PFN Sub LLC, an acquisition subsidiary of PFN, would merge into

[16] April Supplement at 2-3, 5 (noting that Baraga participates in the Lifeline program and receives USDA Reconnect Loan Program Support); May Supplement at 2 (stating that Baraga receives approximately $219,502 of ACAM II support per month); *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 rel. 2022); *see id.* at 8-9 (stating that ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act, or to engage in the sale of assets under section 214 "must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications. Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules. Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs."). Baraga also participates in the Lifeline Program. April Supplement at 3.

[17] HCI receives ACAM funding at the holding company level, not at the individual subsidiary telephone company level. May Supplement at 1-2 (explaining that "[a]though USAC data indicates that it is Hiawatha Telephone Company (subsidiary of HCI) that receives ACAM funding, it is actually HCI that receives such funding").

[18] Application at 3. HTC, Midway, and Ontonagon, Rate-of-Return Cost Companies, are all ETCs participating in the Lifeline program and receive model-based universal service support. April Supplement at 2-3; May Supplement at 2. HCI's two other subsidiaries, Great Lakes Interlink, Inc.(which owns some fiber assets, but does not provide telecommunications services) and Jamadots, Inc. (a broadband provider), are not ETCs and do not receive any high-cost universal service support. April Supplement at 3, 6.

[19] *Id*. at 5.

[20] *Id*.

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

[22] Application at 7.

Winn Comm and then cease its existence.[23] All of the issued and outstanding stock of Winn Comm would be cancelled, and all of the membership interest of PFN Sub would be converted to common stock of Winn Comm[24] The Applicants assert post-consummation of the proposed transaction, PFN, Winn Comm, and Winn Telecom will continue to exist and operate as separate entities from PFN and from PFN's affiliates—that is from Baraga and from HCI and its subsidiaries—in their respective service territories, under the same names, and provide service pursuant to then-existing rates, terms and conditions.[25]

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity, will be transparent to customers, and not negatively impact competition..[26] Because the proposed transaction is more complex than those accepted for streamlined treatment, and in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[27]

Domestic Section 214 Application Filed for the Transfer of Control of
Winn Telephone Company d/b/a Winn Telecom to Peninsula Fiber Network, LLC,
WC Docket No. 23-84 (filed Feb. 6, 2023).

GENERAL INFORMATION

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

Interested parties may file comments **on or before June 28, 2023**, and reply comments **on or before July 5, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

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

[23] *Id.*

[24] *Id.*

[25] *Id.*; April Supplement at 7; May Supplement at 2. Winn will continue its participation in the Lifeline Program, Emergency Broadband Benefit Program, and Affordable Connectivity Program if the transaction is completed. April Supplement at 4.

[26] Application at 11-12; May Supplement at 4-5.

[27] 47 CFR § 63.03(c)(1)(v).

U.S. Postal Service mail.[28] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

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

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

1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2) Megan Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[29] 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

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

[29] *See* 47 CFR § 1.45(c).

within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Megan Danner at (202) 418-1151.

FCC

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-516
Released: June 15, 2023

FCC ANNOUNCES NEXT MEETING OF THE TASK FORCE FOR REVIEWING THE CONNECTIVITY AND TECHNOLOGY NEEDS OF PRECISION AGRICULTURE IN THE UNITED STATES ON JULY 11, 2023

GN Docket No. 19-329

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,[1] the Federal Communications Commission (FCC or Commission) announces the next meeting of the Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Precision Ag Connectivity Task Force or Task Force). The meeting will be held **Tuesday, July 11, 2023, beginning at 10:00 a.m. EDT**. Notice of this meeting was published in the Federal Register.[2]

At this meeting, the Task Force will discuss executive summary details, provide updates on the progress of their respective reports, and continue to discuss strategies to advance broadband deployment on agricultural land and promote precision agriculture. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

The Precision Ag Connectivity Task Force meeting will be open to the public and held in the Commission Meeting Room at FCC Headquarters, 45 L Street, N.E., Washington, D.C. The FCC will accommodate as many live attendees as possible; however, admittance will be limited due to seating availability.

The Task Force meeting will also be available on the Internet via live feed from the FCC's web page at www.fcc.gov/live. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer and Governmental Affairs Bureau at (202) 418- 0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for 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 Task Force in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the Task Force should be filed in GN Docket No. 19-329.

[1] Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA).

[2] Federal Communications Commission, Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States, 88 Fed. Reg. 39253 (June 15 , 2023).

More information about the Precision Ag Connectivity Task Force is available at https://www.fcc.gov/task-force-reviewing-connectivity-and-technology-needs-precision-agriculture-united-states. You may also contact Lauren Garry, Designated Federal Officer, at (202) 418-0942, or Lauren.Garry@fcc.gov; Emily Caditz, Deputy Designated Federal Officer, at (202) 418-2268, or Emily.Caditz@fcc.gov; Thomas Hastings, Deputy Designated Federal Officer, at (202) 418-1343, or Thomas.Hastings@fcc.gov.

- FCC -

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-517
Released: June 15, 2023

PLEADING CYCLE ESTABLISHED FOR COMMENT ON APPLICATION FOR CERTIFICATION FOR THE PROVISION OF TELECOMMUNICATIONS RELAY SERVICE

CG DOCKET NO. 03-123

Comments Due: June 30, 2023
Reply Comments Due: July 10, 2023

Notice is hereby given that the United States territory listed below has applied to the Commission for renewal of certification of its telecommunications relay service (TRS) program, for the five-year period from July 26, 2023 through July 25, 2028.[1] Each state and U.S. territory's application for certification must demonstrate that its TRS program complies with section 225 of the Communications Act[2] and the Commission's rules governing the provision of TRS.[3] This notice seeks public comment on the following U.S. territory application for certification, which can be found on the Commission's website at: https://www.fcc.gov/general/trs-state-and-territories.

File No: TRS-62-22
Micronesian Telephone Corporation
d/b/a IT&E
Saipan

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 & 1.419, interested parties may file comments on or before **June 30, 2023**, and reply comments on or before **July 10, 2023**. All filings must reference **CG Docket No. 03-123** and the relevant U.S. territory identification number of the application for which comments are being submitted.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/filings.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

[1] Current U.S. territory TRS certifications expire July 25, 2023.

[2] Section 225 states, in pertinent part, that the Commission may approve a state's application if it determines that the state's program makes available TRS "in a manner that meets or exceeds" the Commission's TRS requirements and "the program makes available adequate procedures and remedies for enforcing the requirements of the State program." 47 U.S.C. §§ 225(f)(2)(A), (B).

[3] 47 CFR §§ 64.601 *et seq.*

- Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.[4]
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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

For further information regarding this *Public Notice*, contact Dana Warrick, Consumer and Governmental Affairs Bureau, Disability Rights Office at: (202) 418-2247 (voice), or e-mail at: Dana.Warrick@fcc.gov.

- FCC -

[4] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closesheadquarters-open-window-and-changes-hand-delivery-policy.

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. 23-518

Report No. SAT-01733 **Friday June 16, 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-20230530-00127 E Planet Labs PBC

Special Temporary Authority

Grant of Authority Effective Date: 06/15/2023

On June 15, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Planet Labs PBC for special temporary authority for an additional period of up to 60 days to operate certain Skysat satellites at different orbital altitudes from what was previously authorized. Specifically, the Division authorized: Skysat satellites 16-18 to operate up to an altitude of 450 km (± 10 km) ; (2) SkySat satellite 19 to operate up to an altitude of 425 km (± 10 km); and (3) SkySat satellites 20-21 to operate in orbits with a perigee altitude below 400 km, with imaging data communications limited to altitudes above 345 km.

SAT-STA-20230605-00131 E Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 06/15/2023

On June 15, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for a period of 30 days, to operate Intelsat 904's C-band frequencies over new coverage areas in the fixed-satellite service, using the 3625-4200 MHz (space-to-Earth) and 5850-6425 MHz (Earth-to-space) frequency bands at the 29.5° W.L. orbital location.

INFORMATIVE

SAT-LOA-20221019-00145 S3092 Astranis Projects USA LLC

The Satellite Programs and Policy Division has determined that Astranis Projects USA LLC has met the launch and begin operations milestone associated with its grant of authority to deploy and operate a geostationary orbit space station, Arcturus (Call Sign S3092), and may release the bond associated with this authorization. See 47 CFR §§ 25.164(a) and (f), and 25.165(d).

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

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

In re Applications of	)	
	)	
Good Christian Radio Broadcasting, Inc.	)	NAL/Acct. Nos. MB-201541410037; MB-202341410009
For Renewal of License for	)	FRN: 0007753676
Station WLIH(FM), Whitneyville, Pennsylvania	)	Facility ID No. 24576
	)	Application File Nos. BRH-20140729ABP,
	)	0000204831

ORDER

Adopted: June 16, 2023 **Released: June 16, 2023**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Good Christian Radio Broadcasting, Inc. (Licensee), the licensee for Station WLIH(FM), Whitneyville, Pennsylvania (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal applications (collectively, Applications) for the Station.[1] In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Public File Rule contained in section 73.3526 of the Commission's rules (Rules),[2] section 73.3539 of the Rules,[3] which sets forth the filing deadline for license renewal applications, and section 301 of the Communications Act of 1934, as amended (Act),[4] which requires a valid authorization from the Commission to operate a broadcast station.

2. A license renewal application for the 2011-2014 Renewal Cycle was due on April 1, 2014.[5] Licensee filed the 2014 Renewal Application on July 29, 2014, three days before the Station's license expired on August 1, 2014.[6] On October 13, 2015, the Bureau issued a Notice of Apparent Liability for Forfeiture to Licensee because it did not file the 2014 Renewal Application by the April 1, 2014, deadline.[7] License did not pay the *2015 NAL*, nor did it file a response to the *2015 NAL*, and on December 22, 2015, the Bureau issued a Forfeiture Order to Licensee affirming the *2015 NAL*.[8] Licensee

[1] Application File Nos. BR-20140729ABP (filed July 29, 2014) (2014 Renewal Application) and 0000204831 (filed Dec. 5, 2022) (2022 Renewal Application).

[2] 47 CFR § 73.3526.

[3] *See* 47 CFR § 73.3539.

[4] 47 U.S.C. § 301.

[5] *See* 47 CFR § 73.3539(a).

[6] *See* 2014 Renewal Application.

[7] *Good Christian Radio Broadcasting, Inc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 10961 (MB 2015) (proposing $1,500 forfeiture for apparent violation of section 73.3539 of the Rules) (*2015 NAL*).

[8] *Good Christian Radio Broadcasting, Inc.*, Forfeiture Order, 30 FCC Rcd 14482 (MB 2015) (*2015 Forfeiture Order*).

failed to pay the *2015 Forfeiture Order* and did not respond to several emails from the Bureau staff reminding Licensee that it had failed to pay the *2015 Forfeiture Order*.[9]

3. A license renewal application for the 2019-22 Renewal Cycle was due on April 1, 2022.[10] Licensee failed to timely file a renewal application by that date. Subsequently, the Bureau staff contacted Licensee to inform it that it could file a renewal application by May 1, 2022, without a financial penalty.[11] Licensee failed to a renewal application, and the Station's license expired on August 1, 2022. Accordingly, on November 7, 2022, the Bureau issue a Public Notice advising Licensee that the license for the Station was cancelled effectively immediately.[12] At that time, the 2014 Renewal Application was dismissed as moot.[13]

4. Licensee filed a request for special temporary authority (STA) to operate the Station on November 16, 2022,[14] stating that Licensee intended to file a petition for reconsideration of the Station's license cancellation and a license renewal application for the 2019-22 Renewal Cycle, and requesting authority to resume operations pending Commission action on those filings. On December 5, 2022, Licensee filed a petition for reconsideration[15] and the 2022 Renewal Application. In the 2022 Renewal Application, Licensee disclosed that it had not complied with section 73.3526 of the Rules.[16] The Bureau's review of the Station's online public inspection file revealed that Licensee did not upload a single issues and programs list until November 2022.

5. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.3526 and 73.3539 of the Rules, and section 301 of the Act. Pursuant to the Consent Decree, Licensee agrees, among other things, to make a civil penalty payment to the United States Treasury in the amount of three thousand dollars ($3,000) (Civil Penalty), implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations, and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

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

[9] Email from Alexander Sanjenis, Audio Division, FCC Media Bureau, to George A. Buickus, Jr. (Apr. 29, 2016, 15:17 EDT); Email from Alexander Sanjenis, Audio Division, FCC Media Bureau, to George A. Buickus, Jr. (June 12, 2018, 7:40 AM EDT).

[10] *See* 47 CFR § 73.3539(a). Licensee was required to file a license renewal application for the 2019-2022 Renewal Cycle even though the 2014 Renewal Application remained pending. *See Media Bureau Announces Procedures for 2019-2022 Radio License Renewal Cycle*, Public Notice, 34 FCC Rcd 2304 (MB 2019); *see also Gerald R. Parks*, Letter Order, DA 23-107 (MB Feb. 7, 2023) (affirming cancellation of license where licensee had a renewal application pending from the 2011-2014 Renewal Cycle, failed to file a renewal application for the 2019-2022 Renewal Cycle, and failed to seek reconsideration of cancellation of its license within 30 days); *Pollack/Belz Communications Company, Inc.*, Forfeiture Order, 29 FCC Rcd 14635 (MB 2014) (licensee with renewal application pending from prior renewal cycle must file license renewal application for subsequent renewal cycle).

[11] The Bureau staff emailed Licensee at the address found on its website, https://www.faithfamilyministries.net/the-voice-radio, to advise Licensee that it had failed to file the required license renewal application. Email from Raquel Hutson, Audio Division, FCC Media Bureau, to info@thevoiceradio.org (Mar. 2, 2023, 15:03 EST).

[12] *Radio License Expirations*, Public Notice, DA-1162 (MB Nov. 7, 2022).

[13] *Broadcast Actions*, Public Notice, Report No. 50363 (MB Nov. 10, 2022).

[14] Application File No. 0000203646 (Engineering STA, filed Nov. 16, 2022, granted Nov. 17, 2022). Licensee filed a request to extend its STA, which the Bureau has granted (STA Extension, 0000204951, filed Dec. 8, 2022, granted Dec. 12, 2022).

[15] Pleading File No. 0000204830 (filed Dec. 5, 2022).

[16] 2022 Renewal Application at Attach. "WILH Online Public File Exhibit.pdf".

Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in paragraph 15 of the attached Consent Decree.

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

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[17] and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,[18] the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

10. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by Good Christian Broadcasting, Inc., on December 5, 2022 (Pleading No. 0000204830) **IS GRANTED** and the license for Station WLIH(FM), Whitneyville, Pennsylvania **IS REINSTATED.**

11. **IT IS FURTHER ORDERED** that the applications of Good Christian Radio Broadcasting, Inc., for renewal of license for Station WLIH(FM), Whitneyville, Pennsylvania (Application File Nos. BRH-20140729ABP and 0000204831) **ARE GRANTED**, as conditioned herein.

12. **IT IS FURTHER ORDERED** that copies of this Order and Consent Decree shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Good Christian Radio Broadcasting, Inc., c/o Ken Schoonover, PO Box 97, Wellsboro, Pennsylvania, and to its counsel, A. Wray Fitch, III, Esq., Gammon & Grange, P.C., 1945 Old Gallows Road, Suite 650, Tysons, VA 22182.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[17] 47 U.S.C. § 154(i), 154(j), and 503(b).

[18] 47 CFR §§ 0.61, 0.283.

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

In re Applications of	)	
	)	
Good Christian Radio Broadcasting, Inc.	)	NAL/Acct. Nos. MB-201541410037; MB-202341410009
For Renewal of License for	)	FRN: 0007753676
Station WLIH(FM), Whitneyville, Pennsylvania	)	Facility ID No. 24576
	)	Application File Nos. BRH-20140729ABP,
	)	0000204831

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Good Christian Radio Broadcasting, Inc. (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with sections 73.3539(a) and 73.3526 of the Commission's rules[1], and with section 301 of the Communications Act of 1934, as amended.[2] To resolve this matter, the Licensee agrees to make a pay a civil penalty to the United States Treasury and implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3526.

I. DEFINITIONS

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

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

(b) "Applications" means the pending applications for renewal of license for Station WLIH(FM), Whitneyville, Pennsylvania (Application File Nos. BRH-20140729ABP, 0000204831 ("2014 Renewal Application" and "2022 Renewal Application, respectively)).

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

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

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

(f) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with section 73.3526 of the Rules.

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

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

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

[1] 47 CFR §§ 73.3526, 73.3539(a).

[2] 47 U.S.C. § 301.

(j) "Investigation" means the Bureau's decision to hold and not process the Licensee 's license renewal applications due to the Licensee's failure to comply with sections 73.3539(a) and 73.3526 of the Rules, and section 301 of the Act.

(k) "Licensee" means Good Christian Radio Broadcasting, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

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

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

(o) "Section 301" means section 301 of the Communications Act of 1934, as amended, 47 U.S.C. § 301;

(p) "Station" means Station WLIH(FM), Whitneyville, Pennsylvania.

(q) "Violations" means the Licensee's noncompliance with 47 CFR §§ 73.3539(a) and 73.3526 of the Rules, and section 301 of the Act.

II. BACKGROUND

3. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[3] An application for renewal of the Station's license for the 2011-14 Renewal Cycle should have been filed by April 1, 2014, the first full business day following the first day of the fourth full calendar month prior to the Station's license expiration date of August 1, 2014.[4] The 2014 Renewal Application was not filed until July 29, 2014.[5] On October 13, 2015, the Bureau issued a Notice of Apparent Liability for Forfeiture to Licensee because it did not file the Renewal Application by the April 1, 2014, deadline.[6] License did not pay the *2015 NAL*, nor did it file a response to the *2015 NAL*, and on December 22, 2015, the Bureau issued a Forfeiture Order to Licensee affirming the *2015 NAL*.[7] The *2015 Forfeiture Order* remains unpaid.

4. A license renewal application for the Station's license for the 2019-22 Renewal Cycle should have been filed by April 1, 2022, the first full business day follow the first day of the fourth full calendar month prior to the Station's license expiration date of August 1, 2022.[8] No application was filed by that date and on November 7, 2022, the Bureau issued a Public Notice advising Licensee that the license for the Station was cancelled effectively immediately.[9]

[3] 47 CFR § 73.3539(a).

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

[5] Application File No. BRH-20140729ABP (filed July 29, 2014).

[6] *Good Christian Radio Broadcasting, Inc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 10961 (MB 2015) (proposing $1,500 forfeiture for apparent violation of section 73.3539 of the Rules) (*2015 NAL*).

[7] *Good Christian Radio Broadcasting, Inc.*, Forfeiture Order, 30 FCC Rcd 14482 (MB 2015) (*2015 Forfeiture Order*).

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

[9] *Radio License Expirations*, Public Notice, DA-1162 (MB Nov. 7, 2022).

5. Licensee filed a request for special temporary authority on November 16, 2022, to operate the Station until it filed, and the Commission reviewed, a license renewal application for the 2019-2022 Renewal Cycle.[10] Licensee filed the 2022 Renewal Application on December 5, 2022.[11]

6. Section 73.3526 of the Rules requires that quarterly issues and programs lists be uploaded to the station's online public inspection file no later than the tenth day after each quarter.[12] It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations. In the 2022 Renewal Application, Licensee disclosed that it had not complied with section 73.3526.[13] The Bureau's review of the Station's online public inspection filed revealed that Licensee did not upload a single issues and programs list until November 2022.

7. The Bureau and Licensee have negotiated the terms of the Consent Decree that terminates the Investigation into the matters discussed above. As part of the Consent Decree, the Licensee has agreed to maintain a Compliance Plan designed to ensure its future compliance with the Online Public Inspection File Rule noted above for one (1) year after the Effective Date, and to pay a civil penalty of Three Thousand Dollars ($3,000) to the U.S. Treasury.

III. TERMS OF AGREEMENT

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

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

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

11. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to grant the Licensee's pending Applications (Application File Nos. BRH-20140729ABP and 0000204831). In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

12. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[14]

[10] Application File No. 0000203646 (Engineering STA, filed Nov. 16, 2022, granted Nov. 17, 2022). Licensee filed a request to extend its STA, which the Bureau has granted (STA Extension, 0000204951, filed Dec. 8, 2022, granted Dec. 12, 2022).

[11] Application File No. 0000204831 (filed Dec. 5, 2022).

[12] 47 CFR § 73.3526.

[13] 2022 Renewal Application at Attach. "WILH Online Public File Exhibit.pdf".

[14] *See* 47 CFR § 1.93(b).

13. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it twice failed to timely file its Applications for renewal of license, in violation of section 73.3539(a) of the Rules. Licensee also admits that it failed to maintain an online public inspection file, specifically, that it did not upload any issues and programs lists, in violation of section 73.3526 of the Rules during the Station's prior license term. Licensee also admits that it violated section 301 of the Act by operating the Station without a valid authorization after its license expired on August 1, 2022.

14. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.[15] The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee's admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the timely filing of applications or otherwise.

15. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Three Thousand Dollars ($3,000) as follows: Licensee shall pay the entirety of the *2015 Forfeiture Order* (MB-201541410037), One Thousand Five Hundred Dollars ($1,500), and make a separate payment of One Thousand Five Hundred Dollars ($1,500) under the separate NAL Number referenced in the caption (MB-202341410009). Such payments shall be made in eight consecutive quarterly installments (each an Installment Payment). The first Installment Payment in the amount of three hundred seventy five dollars ($375) is due within thirty (30) calendar days of the Effective Date. Thereafter, subsequent Installment Payments of three hundred seventy five dollars ($375) will be due within one hundred and twenty (120) calendar days from the Effective Date, two hundred and ten (210) calendar days from the Effective Date, three hundred (300) calendar days from the Effective Date, three hundred and ninety (390) calendar days from the Effective Date, four hundred and eighty (480) calendar days from the Effective Date, five hundred and seventy (570) calendar days from the Effective Date, and six hundred and sixty (660) calendar days from the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[16]

16. **Payment**. Licensee will also send electronic notification of payment to Alexander Sanjenis at Alexander.Sanjenis@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[17] or by wire transfer. 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:[18]

- 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 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).[19] For

[15] *See* 47 U.S.C. § 503(b)(2)(E).

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

[17] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[18] 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.

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

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

- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed $24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

18. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 17(c), shall apply to all radio stations owned by the Licensee. The Compliance Plan shall contain, at a minimum, the following elements:

(a) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Licensee may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:

i. thoroughly explain the requirements embodied in the Online Public Inspection File Rule;

ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and

iii. be periodically reviewed and revised as necessary to ensure that the information set

forth therein remains current, complete, accurate, and effective.

(b) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Licensee shall provide training under the compliance training plan on at least an annual basis, and it shall periodically review and revise the compliance training program as necessary to ensure that it remains current, complete, and effective.

(c) **Compliance Report**. One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for each station listed in Appendix A. The compliance report shall contain a certification of the Licensee's compliance with the Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require the Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 18 below.

i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the operating procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.

ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules,[20] and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.

iv. The compliance report shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

19. **Reporting Noncompliance**. The Licensee shall report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be

[20] 47 CFR § 1.16.

taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis, Assistant Division Chief, at Alexander.Sanjenis@fcc.gov**.**

20. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 17(c), provided the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

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

22. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Applications, after the Effective Date, provided that the following conditions have been met: 1) the first payment of the Civil Penalty, referenced in paragraph 15, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Applications.

23. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[21] relating to the matters addressed in this Consent Decree.

24. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

26. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

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

30. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

31. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.



Albert Shuldiner
Chief, Audio Division

June 16, 2023
Date

Kenneth B. Schoonover, Jr., President
Good Christian Broadcasting Corporation, Inc.

Date

Kenneth B. Schoonover, Jr., President
Good Christian Broadcasting Corporation, Inc.

6/13/23
Date

PUBLIC NOTICE

Federal Communications Commission
45 L Street, NE
Washington, DC 20554

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

DA 23-520
June 16, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 3 (ARIZONA) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

Gen. Docket No. 91-143 and WT Docket 02-378

The Region 3 (Arizona) 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold planning meetings remotely (via teleconference) on Tuesday, July 25, 2023 at 10:00 am. To participate, interested parties should dial-in to: 602-666-0783; conference ID: 97466596#.

The agenda for the 800 MHz meeting includes:
- Call to order
- Roll Call
- Vacant Position Nominations
- Technical Committee Report
- New Business

The agenda for the 700 MHz meeting includes:
- Vacant Vice Chair Nominations
- Technical Committee Report
- 4.9 GHz Update
- New Business
- Adjourn

Both of the Region 3 RPC meetings are open to the public. All eligible public safety providers whose sole or principal purpose is to protect the safety of life, health, or property in Region 3 may utilize these frequencies. It is essential that public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal, and non-governmental organizations eligible under Sections 90.20 and 90.523 of the Commission's rules,[1] be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 3 should plan to attend. For further information, please contact:

Stuart Snow
AZ Region 3 700/800 MHz Chair
City of Phoenix ITS Radio Services, Frequency Manager
2441 S. 22nd Avenue

[1] 47 CFR §§ 90.20 and 90.523.

Phoenix, Arizona 85009
Phone: 602-262-7034
Email: stuart.snow@phoenix.gov

- FCC -

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

In the Matter of	)	
	)	
DOCOMO Pacific, Inc.	)	File No.: EB-IHD-21-00032716
	)	NAL/Acct. No.: 202332080030
	)	FRN: 0004242723
	)	
	)	
	)	
	)	

ORDER

Adopted: June 27, 2023 **Released: June 27, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether DOCOMO Pacific, Inc. (DPAC or Company) exceeded its previously approved foreign ownership limits. To settle this matter, DPAC admits that it exceeded its previously approved foreign ownership limits, will implement a compliance plan, and will pay a fifty thousand dollar ($50,000) civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding DPAC's compliance with the Commission's foreign ownership limits in section 310(b)(4) of the Communications Act of 1934, as amended (Act)[1] and section 1.5004(f) of the Commission's rules.[2]

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of DPAC's basic qualifications to hold or obtain any Commission license or authorization.[3]

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act, 47 U.S.C. § 154(i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED.**

[1] 47 U.S.C. § 310(b)(4).

[2] 47 CFR § 1.5004(f).

[3] *See* 47 CFR § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by email to: Stephen Miller, Esq. (SMiller@hwglaw.com), Colleen Sechrest Esq. (CSechrest@hwglaw.com), and Paul Margie, Esq. (PMargie@hwhlaw.com), Harris Wilshire and Grannis, LLP, 1919 M Street NW, Washington, DC 20036-3537.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
DOCOMO Pacific, Inc.	)	File No.: EB-IHD-21-00032716
	)	NAL/Acct. No.: 202332080030
	)	FRN: 0004242723
	)	
	)	
	)	
	)	

CONSENT DECREE

1. The Federal Communications Commission (Commission) and DOCOMO Pacific, Inc. (DPAC or Company),[1] by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's (Bureau) investigation, as defined below into whether DPAC apparently violated section 310(b)(4) of the Communications Act of 1934, as amended (Act),[2] and section 1.5004(f) of the Commission's rules (Rules).[3] To resolve this matter, DPAC admits that it violated the provisions of the Act and the Commission's Rules as described herein, agrees to implement a Compliance Plan, and pay a fifty thousand dollar ($50,000) civil penalty.

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended.[4]

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

(c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

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

(e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which the Company is subject by virtue of its business activities, including but not limited to section 310 of the Act and section 1.5004 of the Commission's Rules.

(f) "Company" or "DPAC" means DOCOMO Pacific, Inc., and includes its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

[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] 47 U.S.C. § 310(b)(4).

[3] 47 CFR § 1.5004(f).

[4] 47 U.S.C. § 151 *et seq.*

(g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.

(h) "Covered Employees" means all employees and agents of the Company who perform, supervise, oversee, or manage the performance of duties that relate to the Company's responsibilities under the Communications Laws, including section 310(b) of the Act and section 1.5004 of the Commission's Rules.

(i) "Effective Date" means the date by both the Commission and the Company have signed the Consent Decree and the Commission has adopted it.

(j) "Investigation" means the investigation commenced by the Bureau in EB-IHD-21-00032716.

(k) "LOI" means the Letter of Inquiry issued by the Bureau to DPAC on September 28, 2021, in EB-IHD-21-00032716 in connection with the Company's compliance with the Act and the Commission's Rules.

(l) "LOI Response" means the response to the letter of inquiry transmitted by Paul Margie, Colleen Sechrest and Helen Marie S. Berg, of HWG LLP, counsel for DPAC, to Jeffrey Gee, Chief, Investigations and Hearings Division, Enforcement Bureau dated October 29, 2021 (on file in EB-IHD-21-00032716).

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

(n) "Parties" means the Company and the FCC, each of which is a "Party."

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

(p) "Section 310 Rules" means sections 310 of the Act and other provisions of the Act, the Rules, and Commission orders related to, *inter alia*, obtaining prior approval before making specified foreign ownership changes.

II. BACKGROUND

3. *Legal Background*. Section 310(b)(4) of the Act establishes a 25 percent limit on ownership by foreign individuals, corporations, and governments in U.S.-organized entities that directly or indirectly control, *inter alia*, common carrier radio station licensees.[5] Pursuant to section 310(b)(4), the Commission may permit higher levels of foreign equity or voting interest in a Commission licensee if it determines that such higher levels are consistent with the public interest, which includes assessing, with the assistance and expertise of the Executive Branch, whether approval of the increase is consistent with U.S. national security, law enforcement, foreign policy, and trade policy concerns.[6] The Commission has adopted rules governing the procedures and setting the conditions for obtaining the Commission's prior approval of transactions involving entities seeking to hold equity or voting interests exceeding the 25 percent limits.[7] Commission approval must be obtained before direct or indirect aggregate foreign

[5] 47 U.S.C. § 310(b)(4)

[6] The Commission considers national security, law enforcement, foreign policy and trade policy concerns in its public interest review of an application and will seek input from the Executive Branch on these issues. *Foreign Participation Order* at 23918-21, paras. 61-66. *See also Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership,* Report and Order, 35 FCC Rcd 10927 (2020) (*Executive Branch Review Order*).

[7] 47 CFR §§ 1.5000-1.5004. *See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licenses Under Section 310(b)(4) of the Communications Act of 1934 as Amended*, Second Report and Order, 28 FCC Rcd 5741 (2013) (*2013 Foreign Ownership Order*) (adopting rules for foreign ownership rulings for

(continued….)

ownership of a U.S.-organized entity that controls a common carrier radio station license exceeds 25 percent of the U.S. entity's equity interests and/or 25 percent of its voting interests. Further, even after a U.S.-organized entity controlling a licensee is granted a foreign ownership ruling to exceed the statutory limits in section 310(b)(4), prior Commission approval has been required since adoption of the *2013 Foreign Ownership Order* before any foreign individual or entity not previously approved by the Commission acquires, directly or indirectly, more than five percent of direct or indirect equity or voting interest in the entity.[8]

4. *Factual Background*. DPAC (formerly known as Guam Cellular and Paging, Inc.) is a Guam corporation which is wholly owned by DOCOMO Guam Holdings, Inc., also a Guam corporation.[9] DOCOMO Guam Holdings, Inc. is, in turn, wholly owned by NTT DOCOMO, Inc. (NTT DOCOMO), a Japanese corporation.[10] NTT DOCOMO is wholly owned by Nippon Telegraph and Telephone Corporation (NTT) which is also a Japanese Corporation. The Japanese government, through the Japanese Ministry of Finance (JMOF), holds a minority percentage of the voting and equity interests in NTT and is NTT's largest shareholder.[11]

5. DPAC holds both a domestic and an international section 214 authorization, 84 wireless licenses, three submarine cable licenses, and an earth station satellite license.[12] In 2015, the FCC approved DPAC's application for its ownership structure to have 100 percent foreign ownership consisting of NTT (up to and including 65.15 percent of the equity and voting interests) and JMOF (up to and including 26.95 percent of the equity interests and 41.53 percent of the voting interests).[13]

6. On September 30, 2020, NTT commenced a tender offer for outstanding NTT DOCOMO shares. On November 24, 2020, NTT acquired the tendered shares, which increased its indirect ownership interests in DPAC to 91.46 percent.[14] NTT acquired all shares of NTT DOCOMO's common stock held by the remaining minority shareholders as of December 29, 2020, and, as a result of this transaction, currently owns 100 percent of the equity and voting interests of DPAC. Additionally, as a result of these transactions, JMOF, indirectly held 33.93 percent equity and voting interests in DPAC resulting in a slightly higher equity interest and lower voting interest than previously approved in the 2015 Ruling.

(Continued from previous page)
common carrier and aeronautical licensees); *see also 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 (2016) (*2016 Foreign Ownership Order*) (extending the foreign ownership Rules to broadcast licensees and moving the Rules to 47 CFR §§ 1.5000-1.5004). Before the adoption of Rules in the *2013 Foreign Ownership Order*, foreign ownership declaratory rulings were issued on a case-by-case basis with language and conditions specific to the particular petition.

[8] *2013 Foreign Ownership Order,* 28 FCC Rcd at 5786-87, para. 83; *see also* 47 CFR §1.5004(a)(1) ([T]he 100 percent aggregate allowance "is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or 'group' not previously approved acquires, directly and/or indirectly, more than 5 percent of the U.S. parent's outstanding capital stock (equity) and/or voting stock, or a controlling interest[.]").

[9] LOI Response at 1.

[10] *Id.* at 1.

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

[12] *Id.* at 8-11.

[13] International Authorizations Granted, Rep. No. TEL-01744, Public Notice, DA 15-148, 30 FCC Rcd 7403, 7404 (2015).

[14] *Id.* at 5; IBFS File No.: ISP-PDR-20210128-00002 at 4, http://licensing.fcc.gov/myibfs/ (2021 PDR).

7. In January of 2021, DPAC took corrective action by filing a petition for declaratory ruling to allow NTT and JMOF to exceed their previously approved foreign ownership limits as a result of the aforementioned tender offer, and the then-International Bureau granted the petition on December 9, 2021.[15] DPAC does not dispute that the acquisition of shares of its parent company pursuant to the November/December 2020 tender offer, without prior Commission approval, violated our foreign ownership requirements.

III. TERMS OF AGREEMENT

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

9. **Jurisdiction**. The Company agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

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

11. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Commission further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against the Company concerning the matters that were the subject of the Investigation or to set for hearing the question of the Company's basic qualifications to be Commission licensees or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[16]

12. **Admission of Liability**. The Company admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 11 herein, that the actions described above in paragraphs 4 through 7 violated section 310(b)(4) of the Act and associated Rules.

13. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, the Company shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Company complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the foreign ownership provisions of section 310 of the Act, and section 1.5004 of the Rules prior to assuming his/her duties.

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[15] International Authorizations Granted, Rep. No. TEL-02150, Public Notice, DA 21-1531 (Dec. 9, 2021) (reciting current ownership and approving NTT to hold up to 100% indirect voting and equity interest and the Japanese Ministry of Finance to hold up to 49.99% indirect voting and equity interest in DPAC). As of April 11, 2023, the FCC underwent an internal reorganization splitting the former International Bureau to establish the Office of International Affairs and the Space Bureau. *See* Press Release, Federal Commc'ns Comm'n, FCC Space Bureau and Office of International Affairs to Launch Next Week (Apr. 7, 2023), https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf.

[16] *See* 47 CFR § 1.93(b).

14. **Compliance Plan**. For purposes of settling the matters set forth herein, the Company agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and submit to the Bureau a Compliance Plan designed to ensure future compliance with the foreign ownership rules and requirements in section 310 of the Act, and section 1.5004 of the Rules and with the terms and conditions of this Consent Decree. Any revision to the Compliance Plan shall be submitted to the Bureau within thirty (30) days of the effective date of such revision. The Compliance Plan and any revisions thereto, including any revisions to the Operating Procedures and Compliance Manual, shall be subject to the Bureau's objection. Any Bureau objection will be provided within thirty (30) calendar days from the date of submission to the Bureau. The Bureau's failure to object to the Compliance Plan or any revisions shall not be deemed to be an endorsement or approval of the Compliance Plan and does not waive the Bureau's authority to investigate and take enforcement action against any future apparent violation of the Act or the Commission's Rules.

(a) **Compliance Processes.** Within thirty (30) days after the Effective Date, the Company shall develop appropriate measures to monitor all changes in ownership of the Company.

(b) **Operating Procedures**. Within thirty (30) calendar days after the Effective Date, the Company shall establish Operating Procedures that all Covered Employees must follow to help ensure the Company's compliance with the foreign ownership provisions in section 310 of the Act and sections 1.5004 of the Rules. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the foreign ownership provisions of section 310 of the Act and section 1.5004 of the Rules. The Company shall also develop a Compliance Checklist that describes the steps a Covered Employee must follow to ensure compliance with the foreign ownership provisions of section 310 of the Act and section 1.5004 of the Rules. With regard to any mergers and acquisitions, and/or disposition of any assets or entities involving FCC authorizations or licenses, DPAC will include in its standard due diligence checklist a review for FCC authorizations and licenses, filing of necessary FCC applications, consultation with outside counsel at least thirty (30) days prior to closing any such transaction, and confirmation that it has received FCC consent for the transfer or assignment of FCC authorizations or licenses prior to closing the transaction.

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

(d) **Compliance Training Program**. The Company shall establish and implement a Compliance Training Program on compliance with the foreign ownership provisions of section 310 of the Act and sections 1.5004 of the Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any regulatory noncompliance as required by paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained

within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

15. **Reporting Noncompliance**. The Company shall report any noncompliance with the foreign ownership provisions in section 310 of the Act and section 1.5004 of the Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted by U.S. mail and electronically to Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, with copies submitted electronically to EnforcementBureauIHD@fcc.gov, Kalun.Lee@fcc.gov, and William.Knowles-Kellett@fcc.gov

16. **Compliance Reports**. The Company shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, thirty-six (36) months after the Effective Date, and forty-eight (48) months after the Effective Date.

(a) Each Compliance Report shall include a detailed description of the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the foreign ownership provisions of section 310 of the Act and section 1.5004 of the Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 15 of this Consent Decree.

(b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[17]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted by U.S. mail and electronically to Kalun Lee, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554,

[17] 47 CFR § 1.16.

with a copy submitted electronically to EnforcementBureauIHD@fcc.gov; Kalun.Lee@fcc.gov, and William.Knowles-Kellet@fcc.gov.

17. **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 13-16 of this Consent Decree shall expire forty-eight (48) months after the Effective Date.

18. **Section 208 Complaints; Subsequent Investigations**. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act[18] against the Company or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by the Company with the Communications Laws.

- **Civil Penalty**. The Company will pay a civil penalty to the United States Treasury in the amount of $50,000 within thirty (30) days of the Effective Date. DPAC acknowledges and agrees that upon execution of this Consent Decree, the civil penalty payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[19] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. DPAC shall send electronic notification of payment to EnforcementBureauIHD@fcc.gov, Kalun.Lee@fcc.gov, and William.Knowles-Kellett@fcc.gov on the date said payment is made. Payment of the civil penalty must be made by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts civil penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected: 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[20] or printed CORES form[21] 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).[22] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would

[18] 47 U.S.C. § 208.

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

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

[21] 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.

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

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 CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

19. **Event of Default**. DPAC agrees that an Event of Default shall occur upon the failure by DPAC to pay the full amount of the civil penalty on or before the due date specified in this Consent Decree.

20. **Interest, Charges for Collection, and Acceleration of Maturity Date**. After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by DPAC.

21. **Waivers**. As of the Effective Date, DPAC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. DPAC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither DPAC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and DPAC shall waive any statutory right to a trial *de novo*. DPAC hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[23] relating to the matters addressed in this Consent Decree.

22. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

24. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which DPAC does not expressly consent) that provision will be superseded by such Rule or order.

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

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

26. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Communications Laws. This Consent Decree shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Consent Decree.

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

28. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

29. **Authorized Representative**. Each Party represents and warrants to the others that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

30. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

_____
Loyaan A. Egal
Chief
Enforcement Bureau

_____
Date

_____
James Hofman
Chief Legal Officer
DOCOMO Pacific, Inc.

_____
Date

PUBLIC NOTICE

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

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DA 23-522

Released: June 16, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU TO HOST PUBLIC WORKSHOP ON BORDER GATEWAY PROTOCOL SECURITY ON JULY 31, 2023

PS Docket No. 22-90

The security of the Border Gateway Protocol (BGP) is central to the Internet's global routing system. By this Public Notice, the Public Safety and Homeland Security Bureau (PSHSB) announces that it will host a public workshop on BGP Security on Monday, July 31, 2023, starting at 9:30 am EDT. The event will build upon the robust record generated by the Commission's Notice of Inquiry to identify and discuss existing and potential safeguards to address BGP security issues.

The workshop will highlight the critical importance of addressing risks associated with BGP in light of the risk of consumer harm posed by unsecured Internet routing and explore effective security practices to mitigate these vulnerabilities. The workshop will feature the perspectives from a variety of stakeholders on the actions that have been taken to improve BGP security and a discussion about the potential for future actions for enhancing BGP security. For instance, the workshop will examine the viability of emerging BGP security advancements to address path validation and other approaches to lessen the risks currently inherent in interdomain routing. The workshop will include an opportunity for attendees to engage directly with presenters.

Registration is free and is open to the public as of the release of this Public Notice. Participants may attend this event either in person at 45 L St NE, Washington, DC 20554 in the Commission Meeting Room or remotely via videoconference. We request that both remote and in-person participants register in advance to attend the workshop by using the following link. For any additional information or inquiries regarding the workshop, please contact Haille Laws, Attorney Advisor, Public Safety and Homeland Security Bureau at Haille.Laws@fcc.gov.

A transcript will be generated from 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 call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for 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.

– FCC –

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

In the Matter of	)	
	)	
Metropolitan Transportation Authority	)	
	)	
Request for Modification of Stations KIVD0001 and KIVD0002 to Facilitate Positive Train Control	)	File Nos. 0010144223, 0010144238
	)	
	)	

PROPOSED ORDER OF MODIFICATION

Adopted: June 16, 2023 **Released: June 16, 2023**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Proposed Order of Modification, the Mobility Division of the Wireless Telecommunications Bureau (Bureau), at the request of the Metropolitan Transportation Authority (MTA) of New York,[1] proposes to modify 218-219 MHz Service Stations KIVD0001 and KIVD0002.[2] The proposed action would serve the public interest[3] in rail safety by providing MTA spectrum needed to improve the reliability of its Positive Train Control (PTC) system in four counties (Orange and Dutchess in New York, and Fairfield and New Haven in Connecticut),[4] served by both the MTA Metro-North Commuter Railroad (Metro-North) and its tenant, the National Railroad Passenger Corporation (Amtrak).

2. First, we propose to modify Station KIVD0002 by authorizing the use of an additional 250 kilohertz of spectrum (218.751-219.000 MHz) from the Commission's inventory in the four counties where additional spectrum is required to enhance the reliability of Metro-North's PTC system. This spectrum would augment the 250 kilohertz of adjacent spectrum (218.501-218.750 MHz) that the Bureau provided MTA in 2016 through a prior modification of Station KIVD0002, to enable Metro-North's then initial PTC deployment in the four counties.[5] Second, we propose that MTA return a like amount of

[1] Request for Modification of Licenses of the Metropolitan Transportation Authority, ULS File Nos. 0010144223 (KIVD0001) and 0010144238 (KIVD0002) (filed July 27, 2022, amended Sept. 6 and Oct. 11, 2022, and Mar. 17, 2023) (Modification Request).

[2] 218–219 MHz Service license areas correspond to cellular market areas (CMAs). 47 CFR § 95.1903(c). There are two 500 kHz frequency segments available for assignment in each CMA. Frequency segment A is 218.000–218.500 MHz and frequency segment B is 218.501–219.000 MHz. 47 CFR § 95.1953. Stations KIVD0001 and KIVD0002 operate using, respectively, the frequency segments A and B assigned for the New York, NY-NJ/Nassau-Suffolk CMA (New York CMA).

[3] 47 U.S.C. § 316(a) (the Commission may modify "[a]ny station license . . . either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, . . .").

[4] Congress established the PTC mandate in the Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), which was amended by the Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015).

[5] *Metropolitan Transportation Authority*, Order of Modification, 31 FCC Rcd 8862 (WTB MD 2016) (*2016 Order of Modification*). *See also Metropolitan Transportation Authority*, Proposed Order of Modification and Order on

(continued....)

spectrum from Station KIVD0001 to the Commission. That spectrum would become unassigned and available for future disposition as determined by the Commission,[6] and would result in a net gain of spectrum to the Commission.[7]

3. And third, we propose to grant MTA's related requests for waiver of: (1) rule section 95.1955 to use increased power—from 4 to 8 watts for mobile PTC operations and from 20 to 30 watts for fixed and base station PTC operations, subject to enhanced out-of-band emissions (OOBE) attenuation requirements—under Station KIVD0001 (if modified as proposed by MTA's return of spectrum to the Commission) and under the additional spectrum that would be authorized under Station KIVD0002;[8] and (2) rule section 95.1915(b), which requires a 218-219 MHz Service licensee to file certain information regarding individually licensed base stations.[9] The requested rule waivers and the enhanced OOBE attenuation requirements are consistent with, and supported by, the Bureau's 2016 grant of identical waiver relief to enable MTA's initial PTC deployment under Station KIVD0002.[10]

II. BACKGROUND

4. *MTA and Metro-North*. MTA is a New York State public-benefit corporation responsible for public transportation in 12 counties in southeastern New York, and two counties in southwestern Connecticut.[11] Metro-North is one of the busiest commuter rail systems in the country. In 2021, Metro-North carried over 30 million passengers, providing an average of 103,000 passenger trips each weekday.[12] Its service territory spans seven New York State counties (Bronx, Dutchess, New York, Orange, Putnam, Rockland, and Westchester) and two southwestern Connecticut counties (Fairfield and New Haven).[13]

5. *Positive Train Control*. The Rail Safety Improvement Act of 2008, as amended by the Positive Train Control Enforcement and Implementation Act of 2015 (together, the Rail Safety Act), required most U.S. freight, passenger, and commuter railroads to install and operate interoperable PTC

Reconsideration, 31 FCC Rcd 1436 (2016) (*2016 Proposed Order of Modification* and *2016 Order on Reconsideration*, respectively), *recon. pending*.

[6] Modification Request at 11. MTA would return 250 kilohertz of spectrum (218.000 to 218.250 MHz) covering five counties in northern New Jersey (Essex, Morris, Passaic, Somerset, and Union). *Id*.

[7] *Id*. at 12 (proposing to return 250 kilohertz of spectrum authorized under Station KIVD0001 in five counties with a total population of 2,817,837, in exchange for 250 kilohertz of spectrum needed to enhance PTC in four counties with a total population of 2,519,475, and stating that the requested modification "would result in a net gain of spectrum to the Commission for reallocation to other entities").

[8] *Id*. at 14-15.

[9] *Id*. at 14.

[10] *Metropolitan Transportation Authority Request for Waiver to Facilitate Positive Train Control System*, Order, 29 FCC Rcd 2004 (WTB MD 2014) (*2014 Power Waiver Order*), *modified by 2016 Order on Reconsideration*, 31 FCC Rcd 1436.

[11] Modification Request at 2.

[12] *Id*. at 3.

[13] *Id.* Three of Metro-North's lines terminate in Manhattan's Grand Central Terminal. *Id*. The LIRR, Metro-North's affiliate, provides commuter rail service from eastern Long Island to Manhattan's Penn Station, in five New York counties (Brooklyn, Nassau, New York, Queens, and Suffolk). *Id.* at 2.

systems by December 31, 2018.[14] Four railroads met this deadline.[15] As the Rail Safety Act permits, the remaining railroads subject to the PTC mandate, including Metro-North and the LIRR, requested up to a two-year extension, until December 31, 2020, to implement PTC.[16] The FRA found that Metro-North, LIRR, and the other railroads met the statutory criteria necessary to qualify for an extended implementation schedule and, subsequently, that they met their extended implementation deadlines.[17]

6. PTC systems are designed to reduce the risk of human-error rail accidents by "prevent[ing] train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position."[18] The U.S. rail industry chose to implement PTC through wireless networks that use radio spectrum. These networks have the capacity to enable real-time information sharing between trains, rail wayside devices, and back office applications, regarding train movement authorities, speed restrictions, train position and speed, and the state of signal and switch devices.

7. *Station KIVD0002*. In 2012, MTA acquired Station KIVD0002—the frequency B segment (218.501 to 219.000 MHz) license for the New York CMA—for Metro-North and the LIRR to implement PTC.[19] Station KIVD0002's initial license area covered LIRR's five-county service territory, and five of the nine counties comprising Metro-North's service territory. MTA sought to acquire spectrum on the secondary market for Metro-North to implement PTC in the four remaining counties of its service territory (Dutchess and Orange counties, New York, and Fairfield and New Haven counties, Connecticut) not covered by Station KIVD0002, but its efforts were not fruitful due to a lack of suitable spectrum.[20]

8. *Modification of Station KIVD0002*. In 2016, at MTA's request, the Bureau modified Station KIVD0002 by authorizing the use of 250 kilohertz of spectrum from the Commission's inventory in the four counties needed to complete Metro-North's PTC spectrum footprint.[21] The Bureau required MTA to return 250 kilohertz of spectrum under Station KIVD0002 from five New Jersey counties (Essex, Morris, Passaic, Somerset, and Union) to the Commission; that spectrum became unassigned and available for future disposition as determined by the Commission.[22] As a condition of the license modification, the Bureau required MTA to provide spectrum to New Jersey Transit (NJ Transit) to enable

[14] Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), *amended by* Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015). The Federal Railroad Administration (FRA) is responsible for approving each railroad's PTC system, including design, testing, and implementation, and for ensuring compliance with the Rail Safety Act and FRA regulations implementing that statute. US Department of Transportation (DOT), FRA, *Positive Train Control (PTC) Information (R&D) Summary*, https://www.fra.dot.gov/Page/P0152 (last updated Nov. 13, 2019).

[15] USDOT, *Statement on Positive Train Control Implementation*, https://www.transportation.gov/briefing-room/statement-positive-train-control-implementation (last updated Dec. 31, 2018).

[16] *Id*.

[17] *Id*.

[18] 49 U.S.C. § 20157(i)(5).

[19] Modification Request at 8.

[20] *2016 Proposed Order of Modification*, 31 FCC Rcd at 1448-49, para. 40, and 1456, para. 61.

[21] Each county corresponds to a single CMA: Dutchess County, NY (CMA 151); Orange County, NY (CMA 144); Fairfield County, CT (CMA 042); and New Haven County, CT (CMA 049).

[22] *2016 Order of Modification*, 31 FCC Rcd at 8865.

its PTC deployment in northern New Jersey,[23] and MTA has done so.[24]

9. *Station KIVD0001*. MTA states that following the Bureau's modification of Station KIVD0002, it identified interference issues when using the station's authorized frequencies to implement PTC.[25] MTA explains that the only PTC radios suitable for use in its service territory can generate internal system interference during implementation.[26] To address this problem, MTA implemented additional filtering and has spaced frequency-reuse further apart between transmitter sites.[27] MTA states that the need to space frequency-reuse further apart has limited channel capacity more than initially projected, resulting in a spectrum shortfall.[28] To address this spectrum deficit, MTA acquired Station KIVD0001—the frequency A segment (218.000 to 218.500 MHz) license for the New York CMA—in 2019.[29]

10. MTA states that its acquisition of Station KIVD0001 provides it with the flexibility to resolve interference by spacing spectrally adjacent frequencies at locations greater distances apart, thereby improving the reliability of its PTC system.[30] MTA states that based on the information acquired in implementing available PTC radio equipment, the acquisition of Station KIVD0001 should satisfy its current and future PTC spectrum needs in the license area.[31] However, MTA states that its acquisition of Station KIVD0001 does not resolve interference issues in the four remaining counties served by Metro-North, but not covered by its current authorization.[32] To address its need for additional spectrum, MTA filed the Modification Request now before us.

III. DISCUSSION

A. Modification Request

11. In its Modification Request, MTA requests that we modify Station KIVD0002 to authorize the use of an additional 250 kilohertz of frequency segment B spectrum (218.751-219.000 MHz) in the four counties—Dutchess County, New York (CMA151); Orange County, New York (CMA144); Fairfield County, Connecticut (CMA042); and New Haven County, Connecticut (CMA049)—where additional spectrum is required to enhance the resiliency of Metro-North's PTC system.[33] The proposed modification would result in MTA holding the entire 500 kHz frequency segment

[23] *Id*., 31 FCC Rcd at 8865-66, para. 10 (requiring MTA "to sell or lease on commercially reasonable terms sufficient spectrum [] licensed under Station KIVD0002 to NJ Transit to enable its PTC implementation in seven northern New Jersey counties").

[24] MTA and NJ Transit have entered into a spectrum leasing arrangement (a long-term de facto transfer lease) under Station KIVD0002 to enable NJ Transit's PTC deployment in seven northern New Jersey counties (Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union). Lease ID L000023066.

[25] Modification Request at 10.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id*. at 11.

[32] *Id*. MTA states that no 218-219 MHz Band spectrum is available on the secondary market in the four counties where additional spectrum is needed to improve the reliability of Metro-North's PTC system because the Commission holds the entire 500 kHz frequency A segment and 250 kilohertz of the frequency B segment not licensed to MTA under Station KIVD0002. *Id*. at 11-12.

[33] *Id*. at 11 and unnumbered attachment entitled "Existing and Proposed Frequency Plan."

B (218.501-219.000 MHz) in the four counties.

12. MTA also requests that we modify Station KIVD0001 to return 250 kilohertz of spectrum (218.000-218.250 MHz) to the Commission, covering five New Jersey counties (Essex, Morris, Passaic, Somerset, and Union) where it is unneeded for PTC deployment.[34] MTA states that together, the license modifications would provide it with sufficient spectrum to address interference issues and enable full PTC service in its commuter rail territories.[35] MTA further states that the proposed license modification "would result in a net gain of spectrum to be made available by the Commission to other entities, while allowing the implementation of a service designed to increase safety for the public."[36]

B. The Record

13. Amtrak, NJ Transit, and the State of Connecticut support MTA's request to modify Station KIVD0002 to provide additional spectrum to improve the reliability of Metro-North's PTC system, and no party has opposed MTA's Modification Request. Amtrak operates passenger trains on Metro-North's Hudson Line from Spuyten Duyvil to Poughkeepsie, New York, and on Metro-North's New Haven Line from New Rochelle, New York to New Haven, Connecticut.[37] Amtrak explains that "[t]hese Lines are an important part of Amtrak's intercity passenger rail service," and that it supports MTA's request as "it gains safety benefits from PTC implementation on critical sections of the rail network."[38]

14. NJ Transit, which provides more than 40 million passenger trips each year over 12 commuter rail lines,[39] supports MTA's License Modification Request.[40] NJ Transit states that it "must coordinate PTC implementation with those freight and passenger rail companies (including the MTA) with which it shares trackage, as well as systems in proximity to NJ Transit's in order to avoid interference," and that "the systems must be interoperable."[41] NJ Transit explains that it "has been working with the MTA on technical and interoperability issues," including ensuring that there "is compatible wireless spectrum sufficient to implement PTC in this heavily trafficked area."[42] NJ Transit states that, following the Bureau's modification of Station KIVD0002 in 2016, "the MTA and NJ Transit entered into a lease which provided crucial spectrum capacity to NJ Transit in certain northern New Jersey counties [Essex, Passaic, Hudson, Bergen, Union, Somerset and Morris counties]."[43] NJ Transit

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[34] *Id*. at 11. This modification would result in MTA holding the upper half of frequency segment A (218.251-218.500 MHz) in the five counties.

[35] *Id*. at 11-12.

[36] *Id*. at 14.

[37] Letter from Nicolas Croce, Deputy Chief Engineer, Amtrak, to Jessica Rosenworcel, Chair, FCC (filed Mar. 17, 2023), ULS File Nos. 0010144223, 0010144238 (included in Attachment, "Letters of Support and Certification") (Letters Attachment).

[38] *Id*.

[39] NJ Transit, *NJ Transit Facts at a Glance* (July 1, 2021 through June 30, 2022) at 1, https://content.njtransit.com/sites/default/files/pdfs/FY22-FACTS-AT-A-GLANCE.pdf (last visited Apr. 20, 2023).

[40] Letter from Frederick N. Chidester, Senior Director, PTC Coordination, NJ Transit, to FCC (filed Mar. 17, 2023), ULS File Nos. 0010144223, 0010144238 (included in Letters Attachment) (NJ Transit Letter).

[41] *Id*.

[42] *Id*.

[43] *Id*. MTA and NJ Transit have entered into a spectrum leasing arrangement (a long-term de facto transfer lease) under Station KIVD0002, pursuant to which MTA is leasing spectrum to enable NJ Transit's PTC deployment in seven northern New Jersey counties (Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union). Lease ID L000023066.

further states that it and the MTA are committed to working together "so that coordinated PTC implementation may be achieved."[44] MTA states that the proposed license modifications would permit MTA to provide NJ Transit with additional spectrum flexibility to reduce interference issues pursuant to spectrum leasing arrangements.[45]

15. The State of Connecticut, Department of Transportation (CDOT) states that two of the counties (Fairfield and New Haven) where MTA requires additional spectrum to support PTC are within Connecticut.[46] CDOT explains that, pursuant to a joint service agreement with CDOT, Metro-North operates commuter rail service over the New Haven Line, which runs from New Haven, Connecticut to Grand Central Terminal in Manhattan.[47] According to CDOT, roughly 86,000 passenger trips originate on the Connecticut portion of the New Haven Line each day and CDOT supports MTA's request because it will promote rail safety.[48]

C. Legal Authority

16. Section 316(a)(1) of the Communications Act of 1934, as amended (Act), authorizes the Commission to modify any station license "if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter [*i.e.*, the Act] or of any treaty ratified by the United States will be more fully complied with."[49] The Commission's authority to modify licenses under section 316(a)(1) is well established. The U.S. Court of Appeals for the District of Columbia Circuit has recognized the Commission's "broad power to modify licenses" under section 316(a)(1), explaining that the Commission "need only find that the proposed modification serves the public interest, convenience and necessity."[50]

17. On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act)[51] added section 309(j) to the Act. Section 309(j)(1) generally requires the Commission to award spectrum licenses by a system of competitive bidding once it has accepted mutually exclusive applications.[52] Following passage of the 1993 Budget Act and after awarding licenses for the first nine 218-219 MHz Service markets by lottery,[53] the Commission decided to auction future licenses in the

[44] NJ Transit Letter.

[45] Modification Request at 12.

[46] Letter from Joseph Giulietti, Commissioner, CDOT, to Ajit Pai, Chairman, FCC (filed Mar. 17, 2023), ULS File Nos. 0010144223, 0010144238 (included in Letters Attachment) (CDOT Letter). The CDOT Letter is dated December 20, 2019, and addressed to former FCC Chairman Pai; MTA filed the letter in support of a similar license modification request: ULS File No. 0009012928. MTA withdrew that request and refiled the CDOT Letter with the instant request.

[47] CDOT Letter.

[48] *Id*.

[49] 47 U.S.C. § 316(a)(1).

[50] *California Metro Mobile Communications v. FCC,* 365 F.3d 38, 45 (D.C. Cir. 2004). *See also Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Services in the Upper and Lower L-Band*, Report and Order, IB Docket 96-132, 17 FCC Rcd 2704, 2714, para. 25 (2002) (citing *Rainbow Broadcasting Co. v. FCC*, 949 F.2d 405 (D.C. Cir. 1991), noting the court's finding that "the Commission is afforded significant latitude when it exercises its Section 316 authority") (subsequent history omitted).

[51] P.L. 103-66, 107 Stat. 312 (1993).

[52] 47 U.S.C. § 309(j)(1).

[53] The 218-219 MHz Service was formerly known as the Interactive Video and Data Service.

service, reasoning that the spectrum would likely be used to provide a commercial service.[54] The Commission auctioned licenses by oral outcry, including licenses for each of the four CMAs where MTA seeks spectrum to enhance Metro-North's PTC system;[55] several of the licenses were not granted because the provisionally winning bidders failed to make required payments, while others were returned to the Commission. In 2010, the Bureau postponed a possible second auction of 218-219 MHz Service licenses.[56] The Commission has not accepted mutually exclusive applications for these spectrum licenses and, as it determined in the *2016 Proposed Order of Modification*, it is not required to do so.[57]

18. Section 309(j)(6)(E) of the Act provides that the competitive bidding requirements of section 309(j)(1) should not "be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."[58] Section 309(j)(6)(E) provides "the Commission broad authority to create or avoid mutual exclusivity in licensing, based on the Commission's assessment of the public interest."[59] In the *800 MHz Order*, for example, the Commission stated that "in Section 309(j)(6)(E), Congress recognized that the Commission can determine that its public interest obligation warrants action that avoids mutual exclusivity, and that this obligation extends to 'application and licensing proceedings' (which include license modifications), not just initial licensing matters."[60] Here, MTA seeks spectrum by license modification to enhance a Congressionally-mandated critical rail safety system proven to help protect life and property. Under these exceptional circumstances and consistent with the Commission's *2016 Proposed Order of Modification*,[61] we find that the public interest is served by not permitting the filing of mutually exclusive applications for the limited spectrum at issue.

1. Modification of Station KIVD0002 Will Promote the Public Interest, Convenience, and Necessity

19. We have carefully reviewed the Modification Request and the entire record before us and find that the proposed modification of Station KIVD0002 will promote the public interest, convenience, and necessity—the benchmark for modification of a license under section 316(a) of the Act.[62] We also find that the proposed modification of Station KIVD0002 is consistent with the Commission's fundamental obligation to "promot[e] safety of life and property through the use of wire and radio

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[54] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, Second Report and Order, 9 FCC Rcd 2348, 2357, para. 51 (1994) (finding, based on the record, that the "principal use of IVDS will be 'reasonably likely to involve' the receipt of compensation from subscribers").

[55] *See 2016 Proposed Order of Modification,* 31 FCC Rcd at 1454 n.164 (citing *Announcing High Bidders for 594 Interactive Video and Data Service (IVDS) Licenses*, Public Notice, Mimeo No. 44160 (rel. Aug. 2, 1994)).

[56] *Wireless Telecommunications Bureau Postpones Auction of 218-219 MHz Service and Phase II 220 MHz Service Licenses (Auction 89)*, AU Docket No. 10-107, Public Notice, 25 FCC Rcd 12507 (WTB 2010).

[57] *2016 Proposed Order of Modification*, 31 FCC Rcd at 1454, para 55.

[58] 47 U.S.C. § 309(j)(6)(E).

[59] *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, WT Docket No. 02-55, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15021, para. 85 (2004) (*800 MHz Order*) (other captions, docket numbers, and subsequent history omitted). *See also Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, Report and Order, 15 FCC Rcd 11956, 11962-63, para. 12 (2000) (stating that "[s]ection 309(j)(6) has been construed to give the Commission broad authority to create or avoid mutual exclusivity in licensing, based on the Commission's assessment of the public interest") (citing *DirectTV, Inc. v. FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997)).

[60] *800 MHz Order*, 19 FCC Rcd at 15015, para. 73.

[61] *2016 Proposed Order of Modification*, 31 FCC Rcd 1436, 1455, para 56.

[62] 47 U.S.C. § 316(a).

communications . . . ."[63]

20. Congress enacted the PTC mandate following a tragic rail accident in Chatsworth, California where, on September 12, 2008, a Metrolink commuter train collided head-on with a Union Pacific freight train, killing 25 passengers and injuring more than 100 others.[64] The National Transportation Safety Board (NTSB) found that the train's engineer failed to observe and appropriately respond to a red signal, and that a PTC system would have prevented the collision.[65]

21. The MTA itself experienced a tragic rail accident on December 1, 2013, when a Metro-North commuter train derailed in the Bronx after entering a speed-restricted curve at 82 mph, taking four lives and injuring 61 others.[66] The NTSB determined that a contributing factor to the accident was the absence of a PTC system that would have automatically applied the brakes to enforce the speed restriction.[67]

22. The FRA has provided MTA a $967.1 million loan to finance its PTC deployment. Former U.S. Transportation Secretary Anthony Foxx stated that the "loan will help prevent derailments and ensure the safety of the riding public."[68] And, former FRA Administrator Sarah Feinberg noted that "[t]here are 166 million rides taken on LIRR and Metro-North annually [and that] [i]nstalling PTC will further ensure the safety of employees and passengers alike."[69]

23. Amtrak, a proponent of MTA's request, experienced a catastrophic rail accident in 2015, when an Amtrak train derailed near Philadelphia after entering a 50-mph speed-restricted curve at 106 mph, killing eight passengers, injuring 159 others, and causing more than $30 million of estimated property damage.[70] The NTSB determined that "[c]ontributing to the accident was the lack of a positive train control system."[71]

24. As demonstrated above, the public-safety benefits of PTC are irrefutable. We find that the proposed modification of Station KIVD0002 will promote the vital public interest in rail safety by ensuring that Metro-North is able to continue to fulfill its obligation to deploy PTC as required by Congress in the Rail Safety Act. Specifically, the proposed license modification will promote rail safety and serve the public interest, convenience, and necessity under section 316(a)(1) of the Act by:

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[63] 47 U.S.C. § 151.

[64] NTSB, Collision of Metrolink Train 111 with Union Pacific Train LOF65 12 Chatsworth, California, September 12, 2008, Railroad Accident Report, NTSB/RAR-10/01 at vii (adopted Jan. 21, 2010) (NTSB/RAR-10/01), http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1001.pdf (last visited Apr. 20, 2023).

[65] NTSB/RAR-10/01 at vii.

[66] NTSB, Metro North Railroad Derailment, Railroad Accident Brief, NTSB/RAB-14/12 (adopted Oct. 24, 2014) (NTSB/RAB-14/12), https://www.ntsb.gov/investigations/AccidentReports/Reports/RAB1412.pdf (last visited Apr. 20, 2023).

[67] NTSB/RAB-14/12 at 5.

[68] *See* USDOT, FRA, *Federal Railroad Administration Issues $967.1 Million MTA Loan to Finance Critical Safety Upgrades to the Nation's Largest Commuter Railroads*, Press Release No. FRA 07-15 (May 6, 2015), https://railroads.dot.gov/elibrary/federal-railroad-administration-issues-9671-million-mta-loan-finance-critical-safety (last visited Apr. 20, 2023).

[69] *Id*.

[70] NTSB, Derailment of Amtrak Passenger Train 188, Philadelphia, Pennsylvania, May 12, 2015, Railroad Accident Report, NTSB/RAR-16/02 at 1 (adopted May 17, 2016), https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1602.pdf (last visited Apr. 20, 2023).

[71] *Id*. at vi, 44.

- providing Metro-North, one of the nation's busiest commuter railroads, spectrum needed to enhance the resiliency of its PTC system in Dutchess and Orange counties, New York, and Fairfield and New Haven counties, Connecticut, where MTA has been unable to acquire needed spectrum on the secondary market;[72]
- enabling Amtrak to deploy PTC-equipped passenger trains on Metro-North's Hudson Line (which traverses Dutchess County, New York), and on Metro-North's New Haven Line in Fairfield and New Haven counties, Connecticut, where more than 40 million trips are made each year;[73]
- enabling Metro-North's PTC deployment on three commuter rail branch lines that intersect the New Haven Line in southwestern Connecticut—the New Canaan and Danbury Lines in Fairfield County, and the Waterbury Line in New Haven County;[74] and
- facilitating NJ Transit's PTC deployment by the requirement (a condition of the proposed license modifications) that MTA provide, on commercially reasonable terms, additional spectrum now licensed under Station KIVD0001 to NJ Transit if needed to support its PTC implementation in seven northern New Jersey counties.[75]

25. Additionally, the proposed modification of Station KIVD0001 will promote the public interest, convenience, and necessity under section 316(a)(1) of the Act by resulting in a return of comparable spectrum from Station KIVD0001 to the Commission for future reassignment.[76] The proposed modification would provide the Commission 250 kilohertz of spectrum authorized under Station KIVD0001 in five counties with a total population of 2,817,837,[77] in exchange for 250 kilohertz of spectrum needed to enhance PTC in four counties with a total population of 2,519,475.[78] As a result of the proposed modification, the Commission's 218-219 MHz Service spectrum inventory would increase

[72] Modification Request at 12 (noting that "[s]ince 2010, the MTA has exhausted every reasonable possibility for obtaining needed PTC spectrum.").

[73] CDOT Letter at 1.

[74] Letter from Susan Sarch, Vice President and General Counsel, Metro-North Railroad, to FCC (filed Mar. 17, 2023), ULS File Nos. 0010144223, 0010144238 (included in Letters Attachment) (Sarch Letter).

[75] In the *2016 Order of Modification* the Bureau required, as a condition of the modification of Station KIVD0002, that MTA "sell or lease on commercially reasonable terms sufficient spectrum [] licensed under Station KIVD0002 to NJ Transit to enable its PTC implementation in seven northern New Jersey counties . . . ." *2016 Order of Modification*, 31 FCC Rcd at 8865-66, para. 10. MTA and NJ Transit have entered into a long-term de facto transfer lease under Station KIVD0002. Lease ID L000023066. Although not required by the *2016 Order of Modification,* MTA also currently leases NJ Transit spectrum in these counties under Station KIVD0001. Lease ID L000040457. MTA has committed to leasing additional spectrum under Station KIVD0001 to NJ Transit if needed for PTC deployment. Modification Request at 13 (stating that, "[i]f needed by New Jersey Transit, the MTA commits to leasing that additional spectrum on reasonable terms and conditions to New Jersey Transit.").

[76] Modification Request at 12 (stating that the proposed license modification "would result in a net gain of spectrum to the Commission for reallocation to other entities").

[77] Based on the 2020 U.S. Census, the population includes, by county: Essex, NJ, 863,728; Morris, NJ, 509,285; Passaic, NJ, 524,118; Somerset, NJ, 345,361; and Union, NJ, 575,345. United States Census, QuickFacts, https://www.census.gov/quickfacts/fact/table/unioncountynewjersey,somersetcountynewjersey,passaiccountynewjersey,morriscountynewjersey,essexcountynewjersey/PST045222 (last visited Apr. 20, 2023).

[78] Based on the 2020 U.S. Census, the population includes, by county: Dutchess, NY, 295,911; Fairfield, CT, 957,419; New Haven, CT, 864,835; and Orange, NY, 401,310. United States Census, QuickFacts, https://www.census.gov/quickfacts/fact/table/orangecountynewyork,newhavencountyconnecticut,fairfieldcountyconnecticut,dutchesscountynewyork,US/PST045222 (last visited Apr. 20, 2023).

by a net 74,590 MHz/pops.[79]

2. Proposed License Modifications and Conditions

26. In view of the foregoing and pursuant to section 316(a)(1) of the Act, we hereby propose to modify Stations KIVD0001 and KIVD0002 as follows:

- authorize the use of an additional 250 kilohertz of spectrum, 218.751-219.000 MHz, under Station KIVD0002 in Dutchess County, New York (CMA151); Orange County, New York (CMA144); Fairfield County, Connecticut (CMA042); and New Haven County, Connecticut (CMA049);
- delete the authorization to use 250 kilohertz of spectrum, 218.000-218.250 MHz, under Station KIVD0001 from five New Jersey counties, all in CMA001—Essex, Morris, Passaic, Somerset, and Union—which spectrum will become unassigned and available for future disposition as determined by the Commission; and
- add a special condition requiring MTA to sell or lease, on commercially reasonable terms, additional spectrum now licensed under Station KIVD0001 to NJ Transit if needed to support its PTC deployment in Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union counties, New Jersey.[80]

3. Waiver of Section 95.1955

27. MTA requests a waiver of section 95.1955 (formerly section 95.855) to deploy PTC with increased power under Station KIVD0001 (as modified by a return of spectrum to the Commission) and under the additional spectrum that would be authorized under Station KIVD0002 as proposed above.[81]

28. In 2014, the Bureau granted MTA a limited waiver of section 95.1955's ERP limits—permitting an increase from 4 to 8 watts for mobile operations, and from 20 to 30 watts for base station operations—to facilitate PTC implementation under Station KIVD0002 (then limited to CMA001).[82] In 2016, the Commission adopted related OOBE attenuation requirements to address the possibility of interference from waiver-enabled PTC transmitters to spectrally adjacent operations.[83] The Commission applied the same power limits and attenuation requirements to the frequency segment B spectrum (218.501-218.750 MHz) that it authorized by modification of Station KIVD0002: in Dutchess County, New York (CMA151); Orange County, New York (CMA144); Fairfield County, Connecticut (CMA042); and New Haven County, Connecticut (CMA049).[84] MTA states that since commencing waiver-enabled PTC operations under Station KIVD0002, "there have been no reports of interference to third parties from any of MTA's PTC operations."[85]

29. MTA requests that we extend the limited waiver of section 95.1955's ERP limits (and related OOBE attenuation requirements) to PTC operations in the same four counties where it requests that the remaining frequency segment B spectrum (218.751-219.000 MHz) be authorized by modification

[79] 250 kilohertz x (2,817,837-2,519,475) = 74,590 MHz/pops.

[80] Modification Request at 13 (stating that "[i]f needed by New Jersey Transit, the MTA commits to leasing that additional spectrum on reasonable terms and conditions to New Jersey Transit").

[81] *Id*. at 14.

[82] *2014 Power Waiver Order,* 29 FCC Rcd 2004.

[83] *2016 Order On Reconsideration*, 31 FCC Rcd at 1446-47, paras. 32-34.

[84] *2016 Proposed Order of Modification,* 31 FCC Rcd 1436.

[85] Sarch Letter.

of Station KIVD0002.[86] MTA also requests that we apply the same relief to Station KIVD0001, as modified by a return of spectrum to the Commission.[87] In support of its request, MTA states that "[a]doption of consistent technical parameters across the breadth of the MTA's PTC system will aid in system design, reducing potential costs by avoiding the need to utilize different equipment in different parts of the MTA's service area."[88]

30. We evaluate MTA's request under section 1.925(b)(3) of the Commission's rules. Under that rule, the Commission may grant a request for waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[89]

31. Based on the record before us, we find that the public interest in rail safety will be served by proposing to afford MTA the same relief granted in the *2014 Power Waiver Order*, as modified by the stricter OOBE attenuation requirements adopted in the *2016 Order On Reconsideration*, to facilitate its PTC implementation under Stations KIVD0001 and KIVD0002. Congress adopted the PTC mandate to save lives and property, and the higher power limits requested here will enable MTA to meet its obligation to deploy PTC. We find that, in view of the PTC mandate and the unique factual circumstances before us (including the cited benefits of consistent technical standards across MTA's entire service territory), strict application of section 95.1955's power limits to Metro-North's PTC deployment in Dutchess and Orange counties, New York, and Fairfield and New Haven counties, Connecticut (using the additional spectrum we propose to authorize under Station KIVD0002) would be contrary to the public interest.[90] For these same reasons, we propose to grant MTA a limited waiver of section 95.1955's power limits to enable PTC operations under Station KIVD0001, as modified by a return of spectrum to the Commission.

32. *OOBE Limits*. MTA's non-waiver enabled PTC operations in the 218-219 MHz Band must comply with section 95.1957 of the Commission's rules.[91] Section 95.1957(b)(2) requires licensees to attenuate their emissions by at least 28 dB on any frequency removed from the midpoint of the assigned frequency segment by more than 250 kHz up to and including 750 kHz.[92] Section 95.1957(b)(3) requires licensees to attenuate their emissions by at least 35 dB from the midpoint of their assigned frequency segment by more than 750 kHz up to and including 1250 kHz.

33. The midpoint of MTA's assigned frequency segment A under Station KIVD0001 is 218.250 MHz. Thus, when operating under Station KIVD0001 within the power limits prescribed by the Commission's rules, emissions must be attenuated by at least 28 dB in the Automated Maritime Telecommunications Service (AMTS) lower A Block (217.5 to 218 MHz), and by at least 35 dB in the AMTS lower B Block (217 to 217.500 MHz) and AMTS upper A Block (219.500 to 220 MHz).

34. The midpoint of MTA's assigned frequency segment B under Station KIVD0002 is 218.750 MHz. Thus, when operating under Station KIVD0002 within the power limits prescribed by the

[86] Modification Request at 14.

[87] *Id*.

[88] *Id*.

[89] 47 CFR § 1.925(b)(3).

[90] *Id*. § 1.925(b)(3)(ii).

[91] *Id*. § 95.857.

[92] *Id*. § 95.857(a)(2).

Commission's rules, emissions must be attenuated by at least 28 dB in the AMTS upper B Block (219 to 219.500 MHz), and by at least 35 dB in the AMTS upper A Block (219.500 to 220 MHz) and AMTS lower A Block (217.5 to 218 MHz).

35. *Waiver-enabled Fixed and Base Station Operations*. The *2014 Power Waiver Order* provided MTA an increase in maximum ERP from 20 to 30 Watts, or 1.77 dB, for fixed and base station PTC operations.[93] In the *2016 Order on Reconsideration*, the Commission required MTA to attenuate the OOBE of fixed and base stations by an additional 1.77 dB to ensure that, when operating fixed and base stations under the waiver's increased ERP limit, MTA's waiver-enabled PTC operations would have no more effect on spectrally adjacent AMTS operations than would operations under section 95.1955's 20-watt power limit.[94] Thus, when using increased ERP under the proposed power waiver for fixed and base station operations under Station KIVD0001 (which has a frequency midpoint of 218.250 MHz), we will require MTA to attenuate emissions by at least 29.77 dB in the AMTS lower A Block (217.5 to 218 MHz), and by at least 36.77 dB in the AMTS lower B Block (217 to 217.500 MHz) and AMTS upper A Block (219.500 to 220 MHz). And, when using increased ERP under the proposed waiver for fixed and base station operations, under Station KIVD0002 (which has a frequency midpoint of 218.750 MHz), MTA must attenuate emissions by at least 29.77 dB in the AMTS upper B Block (219 to 219.500 MHz), and by at least 36.77 dB in the AMTS upper A Block (219.500 to 220 MHz) and the AMTS lower A Block (217.5 to 218 MHz).

36. *Waiver-enabled Mobile Operations*. The *2014 Power Waiver Order* provided MTA an increase in maximum ERP from 4 to 8 Watts, or 3 dB, for mobile PTC operations.[95] In the *2016 Order on Reconsideration*, the Commission required MTA to attenuate the OOBE of mobile stations by an additional 3 dB to ensure that, when operating mobile stations under the waiver's increased ERP limit, MTA's waiver-enabled PTC operations would have no more effect on spectrally adjacent AMTS operations than would operations under section 95.1955's 4-watt power limit.[96]

37. Thus, for Station KIVD0001, when using increased ERP under the proposed waiver for mobile operations, we will require MTA to attenuate emissions by at least 31 dB in the AMTS lower A Block (217.500 to 218 MHz), and by at least 38 dB in the AMTS lower B Block (217 to 217.500 MHz) and AMTS upper A Block (219.500 to 220 MHz). And, for Station KIVD0002, when using increased ERP under the proposed waiver for mobile operations, we will require MTA to attenuate emissions by at least 31 dB in the AMTS upper B Block (219 to 219.500 MHz), and by at least 38 dB in the AMTS upper A Block (219.500 to 220 MHz) and the AMTS lower A Block (217.5 to 218 MHz).

38. The additional attenuation requirements described above will ensure that PTC operations under the proposed waiver's permitted ERP limits will have no more effect on possible spectrally adjacent AMTS operations than would operations under section 95.1955's ERP limits.[97] We note moreover that under section 95.1961(b) of the Commission's rules, the Commission retains authority to require MTA to modify its PTC operations if we find that operations under the increased ERP limits (with

[93] *2014 Power Waiver Order*, 29 FCC Rcd at 2007, para. 10. 20 watts ERP = 13 dB; 30 watts ERP = 14.77 dB; 14.77 dB - 13 dB = 1.77 dB.

[94] *2016 Order On Reconsideration*, 31 FCC Rcd at 1446-47, para. 32.

[95] *2014 Power Waiver Order*, 29 FCC Rcd at 2007, para. 10.

[96] *2016 Order On Reconsideration*, 31 FCC Rcd at 1447, para. 33.

[97] Section 95.1957(b)(4) requires 218-219 MHz Service licensees to attenuate their emissions by a least 43 plus 10 log (base 10) (mean power in watts) dB on any frequency removed from the midpoint of the assigned frequency segment by more than 1250 kHz. 47 CFR § 95.1957(b)(4). Additional attenuation is unnecessary under section 90.1957(b)(4) because the amount of attenuation is directly related to the amount of power used.

the required additional attenuation) cause harmful interference.[98]

4. Waiver of Section 95.1915(b)

39. MTA also requests a waiver of section 95.1915(b) (formerly section 95.815(b)), which requires a 218-219 MHz Service licensee to provide certain information regarding individually licensed base stations.[99] Section 95.1911(b) provides for individual licensing of base stations in the 218-219 MHz Service where the antenna exceeds 6.1 meters above ground.[100] Section 95.1915(b), in turn, requires that each request to add, delete, or modify technical information of an individually licensed base station must include a description of the licensee's system after the proposed addition, deletion, or modification, including the population served, and an explanation of how the system will satisfy the substantial service requirement of section 95.1931.[101]

40. We find that in view of the unique factual circumstances of the federal PTC mandate, application of section 95.1915(b)'s requirement that MTA provide population information for each individually licensed base station and an explanation of how its PTC system will satisfy the substantial service requirement under section 95.1931 each time it adds, deletes, or modifies an individually licensed base station would be unduly burdensome.[102] The population served by a specific base station is not germane to assessing the interference potential of an MTA PTC base station change.[103] We therefore propose to grant MTA the requested limited waiver of section 95.1915(b).[104]

5. Protest Rights and Procedures

41. Section 316(a)(1) of the Act provides that no proposed order of modification shall become final until the license holder has been provided at least 30 days to protest the proposed order; the Commission may establish a shorter period where the safety of life or property is involved.[105] We will provide MTA 30 days from the release date of this Proposed Order of Modification to file a protest. Section 316(a)(2) of the Act provides that "[a]ny other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date."[106] Section 316(a)(3) provides that "[a]ny protest filed . . . shall be subject to the requirements of section 309, for petitions to deny."[107] Section 309(d) in turn provides that a petition to deny must "show

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[98] 47 CFR § 95.1961(b) (providing that "[t]he use of any frequency segment (or portion thereof) at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of a frequency segment (or portion thereof) specified for the 218–219 MHz Service system may be restricted as to specified geographical areas, maximum power, or other operating conditions"). Staff has identified three out-of-band channel 13 digital TV stations (WKOB-LD, WGBY, and WHYY) whose protected service contours partially overlap MTA's service area. Consistent with section 95.1961(b), we propose that in any waiver grant, MTA would be required to ensure that its waiver-enabled PTC operations do not cause harmful interference to any of these stations.

[99] Modification Request at 14.

[100] 47 CFR § 95.1911(b).

[101] *Id*. § 95.1915(b).

[102] *Id*. § 1.925(b)(3)(ii).

[103] *2014 Power Waiver Order*, 29 FCC Rcd at 2008, para. 14 (finding that "[t]he population served by a specific base station is not relevant for assessing the interference potential of an MTA PTC base station change").

[104] MTA must otherwise comply with the section 95.1915(b) requirement to file an appropriate application each time it adds, deletes, or modifies an individually licensed base station. 47 CFR § 95.1915(b).

[105] 47 U.S.C. § 316(a)(1). *See also* 47 CFR § 1.87(a) (implementing 47 U.S.C. § 316(a)(1)).

[106] 47 U.S.C. § 316(a)(2). *See also* 47 CFR § 1.87(c) (implementing 47 U.S.C. § 316(a)(2)).

[107] 47 U.S.C. § 316(a)(3). *See also* 47 CFR § 1.87(d) (implementing 47 U.S.C. § 316(a)(3)).

that the petitioner is a party in interest," that is, has standing, and that the Commission's action would be contrary to the public interest.[108]

IV. CONCLUSION AND ORDERING CLAUSES

42. For the reasons stated above and in furtherance of the Commission's fundamental obligation to "promot[e] safety of life and property through the use of wire and radio communications," we propose to modify Stations KIVD0001 and KIVD0002 to enable MTA to facilitate continued compliance with its statutory obligation to deploy PTC as required by Congress in the Rail Safety Act.[109] The additional 250 kilohertz of spectrum that we propose to authorize MTA to use under Station KIVD0002 (and the related power waiver) may be used only to comply with Congress's PTC mandate.[110] Today's proposed action is subject to the requirement that MTA provide additional spectrum licensed under Station KIVD0001, on commercially reasonable terms, if needed to support NJ Transit's PTC deployment in Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union counties, New Jersey.[111]

43. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 303(r), and 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 316(a)(1), and sections 1.87 and 1.925(b)(3) of the Commission's Rules, 47 CFR §§ 1.87, 1.925(b)(3), this Proposed Order of Modification IS ADOPTED.

44. FURTHER, IT IS PROPOSED that, pursuant to sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and section 1.87 of the Commission's Rules, 47 CFR § 1.87, Stations KIVD0001 and KIVD0002, licensed to the Metropolitan Transportation Authority of New York, BE MODIFIED consistent with this Proposed Order of Modification.[112]

45. IT IS FURTHER ORDERED that, pursuant to section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 316(a)(1), the Wireless Telecommunications Bureau SHALL SEND this Proposed Order of Modification by certified mail, return receipt requested, to the Metropolitan Transportation Authority of New York.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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[108] 47 U.S.C. § 309(d). *See also* 47 CFR § 1.939 (petitions to deny).

[109] Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), *amended by* Pub. L. No. 114-73, § 1302 (Oct. 29, 2015).

[110] Likewise, the power rule waiver (47 CFR § 95.1955) that we propose to grant to MTA for Station KIVD0001 may be used only to deploy PTC.

[111] *See* Sarch Letter (committing to provide to NJ Transit sufficient spectrum on commercially reasonable terms).

[112] Skybridge Spectrum Foundation, an entity currently in receivership, previously filed a Petition for Reconsideration opposing the renewal of Station KIVD0002, ULS File No. 0006109691. That petition will be addressed separately.

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 23-524
Released: June 16, 2023

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

WC Docket No(s). 23-145 & 23-147

Comments Due: July 3, 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 **July 17, 2023**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] *See* 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day… unless the Commission has notified the applicant that the grant will not be automatically effective.").

applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **July 3, 2023**.[5] Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[6] Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[7] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.[8] Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or

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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*.

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): TDS Metrocom, LLC**
WC Docket No. 23-145, Comp. Pol. File No. 1838
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-145*%22))
Affected Service(s) – all retail voice and data services provided over Unbundled Network Elements to 275 commercial customers
Service Area(s) – Madison, Fox Valley, Fitchburg, Janesville, Brookfield, and New Berlin, Wisconsin
Authorized Date(s) – on or after July 18, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): TDS Metrocom, LLC**
WC Docket No. 23-147, Comp. Pol. File No. 1840
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-147*%22))
Affected Service(s) – all retail voice and data services provided over Unbundled Network Elements to 135 residential customers
Service Area(s) – Appleton, De Pere, Fond du Lac, Green Bay, Kaukauna, Little Chute, Neenah, and Oshkosh, Wisconsin
Authorized Date(s) – on or after July 18, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-525
Released: June 16, 2023

FCC ANNOUNCES A TRIBAL WORKSHOP HOSTED BY THE LUMMI NATION
July 12-13, 2023
Silver Reef Casino Resort, 4876 Haxton Way, Ferndale WA 98248

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

FCC staff will provide presentations on a broad range of important FCC initiatives that support the deployment of communications infrastructure and services in Tribal communities (e.g., Broadband Data Collection, Affordable Connectivity Program, Universal Service Fund Schools and Libraries Program). Such infrastructure supports Tribal economic development, Tribal schools and libraries, and low-income families, as well as public safety departments, and Tribal government administration. The workshop will also provide an overview and update from the FCC's Native Nations Communications Task Force (NNCTF) regarding their work and will highlight issues related to infrastructure deployment on Tribal lands. In addition to workshop training sessions, the event will include a listening session inviting Tribal comment on current FCC initiatives to promote equal access to broadband and eliminate digital discrimination.

Tribal government leaders, Tribal IT managers, government and community planners and managers, Tribal enterprise specialists, and representatives of Tribal social service agencies, schools, and libraries are all persons who should consider attending this event.

The workshop will be held over two days on July 12-13, 2023, at Silver Reef Casino Resort, 4876 Haxton Way (West Haxton Way at Slater Road), Ferndale, WA 98248. Doors and registration will open at 9:30 a.m. PST on July 12th.

Registration is free. To register for the workshop, please send your name, title, Tribal affiliation, and contact information, with the subject line "July Workshop" to **tribal.events@fcc.gov.** Questions about the workshop may be directed to the Office of Native

Affairs and Policy: Lloyd Collier, Legal Advisor, lloyd.collier@fcc.gov or Derik Goatson, Legal Advisor, derik.goatson@fcc.gov. Walk-ins can also be accommodated.

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

-FCC-

PUBLIC NOTICE

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

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

DA 23-526
Released: June 20, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF ACCESSPLUS COMMUNICATIONS, INC. BY RINGSQUARED APC LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-160

Comments Due: July 5, 2023
Reply Comment Due: July 11, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by AccessPlus Communications, Inc. (AccessPlus) and RingSquared APC LLC, (RingSquared APC), (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer certain assets of AccessPlus to RingSquared APC.[2]

AccessPlus, a Massachusetts corporation, is a facilities-based competitive access provider operating and is certificated as a competitive local exchange carrier in Massachusetts.[3] AccessPlus offers wholesale and retail access, voice, and other services throughout its territory.

RingSquared APC is a newly formed subsidiary of RingSquared LLC (RingSquared), which provides local exchange and long distance telecommunications services in multiple states.[4] RingSquared Telecom LLC (RS Telecom), a Delaware limited liability company and a wholly-owned subsidiary of RingSquared, provides local telecommunications, long distance, and/or interconnected Voice over Internet Protocol services almost exclusively to business customers, on

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

[2] Applicants filed a supplement to their application on June 1, 2023. Letter from James C. Falvey, Counsel to RingSquared APC, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-160 (filed June 1, 2023). Applicants also filed an application for the transfer of authorizations associated with wireless licenses. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] AccessPlus participates in the E-Rate program.

[4] RingSquared participates in the E-Rate program.

both a retail and wholesale basis. RS Telcom has fewer than 100 residential customers nationwide, all of which are located either in New York or Massachusetts.

AccessPlus agreed to sell to RingSquared all assets necessary for it to operate its telecommunications network and all wholesale service and end-user customer contracts. Applicants state that, as a result, RingSquared will service AccessPlus' current customers as prior to the transaction. Applicants state that the proposed transaction would be transparent to customers and services will be offered under the same terms and conditions.

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity. We accept the application for streamlined filing under section 63.03(b)(2)(i) of the Commission's rules.[5]

Application Filed for the Transfer of Control of Domestic Section 214 Authorization of AccessPlus Communications, Inc. to RingSquared APC LLC, WC Docket No. 23-160 (filed May. 15, 2023).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before July 5, 2023**, and reply comments **on or before July 11, 2023**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.

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

1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

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

[5] 47 CFR § 63.03(b)(2)(i).

presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[6] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

FCC

[6] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-527
Released: June 20, 2023

THE FEDERAL COMMUNICATIONS COMMISSION AND THE NATIONAL SCIENCE FOUNDATION ANNOUNCE JULY 13, 2023 WORKSHOP: THE OPPORTUNITIES AND CHALLENGES OF ARTIFICIAL INTELLIGENCE FOR COMMUNICATIONS NETWORKS AND CONSUMERS

The Federal Communications Commission and the National Science Foundation will host a workshop, *The Opportunities and Challenges of Artificial Intelligence for Communications Networks and Consumers*, to be held on July 13, 2023, from 9:00 am to 12:30 pm, EDT. The workshop will be held in person in the Commission Meeting Room at FCC Headquarters, 45 L Street, NE, Washington, DC, and will also be available to the public for viewing via the Internet.

This half-day workshop will convene a diverse array of stakeholders—network operators and vendors, leading academics, federal agencies, and public-interest representatives—to discuss the promise and challenge of artificial intelligence (AI) in the telecommunications and technology sectors. The workshop will cover a wide range of issues, including AI's transformative potential to optimize network traffic; improve spectrum policy and facilitate sharing; and enhance resiliency through self-healing networks. The workshop will also explore how AI will affect the fight against illegal robocalls and robotexts; efforts to foster digital equity and combat discrimination; and initiatives to bring greater transparency and affordability to broadband access.

The agenda is attached to this Public Notice and will be available at https://www.fcc.gov/fcc-nsf-ai-workshop.

Attendance. This workshop is open to the public and will be available via live feed from the FCC's web page at www.fcc.gov/live. Event attendees are advised to bring a driver's license or other valid identification and to arrive approximately 30 minutes prior to the start of the workshop to allow sufficient time to go through security. Additional requirements related to visiting the FCC's facility may be provided to in-person attendees after registration. You may attend in person or via the webcast; preregistration is encouraged for both. Please pre-register by submitting your name and company affiliation in an email to FCCAIworkshop@fcc.gov no later than July 6, 2023. The workshop will be recorded and publicly available at https://www.fcc.gov/news-events/events/archived after the event.

Instructions for Webcast. To join the webcast on the morning of the event, go to http://www.fcc.gov/live.

Accessibility Information. Reasonable accommodations for people with disabilities are available upon request. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Please include a description of the accommodation you will need and tell us how to contact you. Requests for special accommodation should be made as early as possible. Last minute requests will be accepted but may be impossible to accommodate.

For additional information, contact FCCAIworkshop@fcc.gov. All media inquiries should be directed to Will Wiquist at will.wiquist@fcc.gov or (202) 418-0500.

- FCC -

AGENDA

The Opportunities and Challenges of Artificial Intelligence for Communications Networks and Consumers

Federal Communications Commission
Washington, D.C. 20554

July 13, 2023
9:00 am – 12:30 p.m. EDT

9:00 Introduction

Dr. John Chapin, Senior Advisor for Spectrum, NSF

Opening Remarks

Jessica Rosenworcel, Chairwoman, FCC
Dr. Sethuraman "Panch" Panchanathan, Director, NSF
Nathan Simington, Commissioner, FCC

Keynote Address

Dr. Margaret Martonosi, Assistant Director for Directorate for Computer and Information Science and Engineering, NSF

9:45 Panel 1: AI's Dramatic Impact on Communications Networks and Technologies

Nageen Himayat, Senior Principal Engineer, Intel Labs
Lisa Guess, Senior Vice President, Ericsson/Cradlepoint
Harold Feld, Senior Vice President, Public Knowledge
Sayandev Mukherjee, Distinguished Technologist, Next-Gen Systems, CableLabs
Ness Shroff, Director, NSF AI Institute; Professor of ECE and CSE, The Ohio State University
Randall Barry, Chair and Professor of ECE, Northwestern University

Moderator: Dr. Martin Doczkat, Chief, Electromagnetic Compatibility Division, Office of Engineering and Technology, FCC

11:15 Panel 2: AI as a Tool and Challenge for Consumer Empowerment

Elham Tabassi, Chief of Staff, Information Technology Laboratory, National Institute of Standards and Technology
Greg Bohl, Chief Data Officer, TNS
Jorge Amar, Senior Partner, McKinsey & Company
Dr. Alisa Valentin, Senior Director, Technology and Telecommunications Policy, National Urban League

Moderator: Arpan Sura, Senior Counsel, Wireless Telecommunications Bureau, FCC

12:25 Closing Remarks

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6256663
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: June 20, 2023 **Released: June 20, 2023**

By the Acting Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We conclude that Clear Rate's actions violated the Commission's slamming rules, and we therefore grant Complainant's complaint.

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

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.[6] In adopting the rules, the Commission stated that upon a finding of

[1] *See* Informal Complaint No. 6256663 (filed June 5, 2023); *see also* 47 CFR §§ 64.1100 – 64.1190.

[2] 47 U.S.C. § 258(a).

[3] *See* 47 CFR § 64.1120.

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

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

[6] *Id.* § 64.1120(a)(1)(i)(A).

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 alleged that his business received a call from someone indicating they were with Verizon, the business's current carrier. "They knew our billing information [and] said that they could save us $20 per line by getting us a commercial rate."[10] Complainant stated that the caller then transferred them to another person who asked questions "that seemed a little off, but since the first person was so adamant they were with Verizon we weren't too worried."[11] Finally, Complainant said that when the business realized they had been "scammed," they called Clear Rate to cancel the service, and Clear Rate told them to call Verizon.[12] "We called Verizon and they informed us our number was blocked and they couldn't get it back from [Clear Rate]."[13]

5. Pursuant to our rules, we notified Clear Rate of the complaint.[14] Clear Rate responded, stating that Complainant completed a TPV recording and that Complainant "was aware he was giving us permission to switch his telephone carrier to Clear Rate Communications."[15] Clear Rate did not, however, provide the TPV recording. It further stated that it did not have a recording of the sales call and was therefore unable to dispute Complainant's misrepresentation claim.[16]

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."[17] We therefore find

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

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

[9] *See* Informal Complaint No. 6256663.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[15] *See* Clear Rate Response to Informal Complaint No. 6256663 (filed June 12, 2023). Clear Rate also claimed it waived the balance on the account, and that "there is zero owed at this time."

[16] *Id.* at 2.

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

that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.[18]

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

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

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

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

[19] *See id.* § 64.1160(b).

[20] *See id.* § 64.1160(d).

[21] *See id.* § 64.1140, 64.1160.

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 23-529
Released: June 21, 2023

UNIVERSAL LICENSING, TOWER CONSTRUCTION NOTIFICATION, E-106, AND ANTENNA STRUCTURE REGISTRATION SYSTEMS ARE AVAILABLE; BUREAUS PROVIDE ADDITIONAL GUIDANCE ON FILING DEADLINE EXTENSIONS

The Federal Communications Commission's Universal Licensing System (ULS), Tower Construction Notification System (TCNS), E-106 System, and Antenna Structure Registration System (ASR) are now available.[1] These systems were unavailable from approximately 6:30 p.m. EDT on Friday, June 9, 2023 until approximately 9:00 a.m. EDT on Wednesday, June 21, 2023 due to technical issues. On June 13, 2023, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (the Bureaus) issued a public notice providing initial guidance regarding affected filings and review periods, as well as resources available for emergency authorization requests.[2] By this Public Notice, the Bureaus provide additional guidance regarding filing deadlines and review periods affected by the unavailability of these systems. This Public Notice supersedes the June 13 Public Notice to the extent that it is inconsistent with any deadlines or time periods set forth therein.

Extension of Deadlines for Regulatory Filings in ULS and ASR: Because parties could not make electronic filings or view the contents of the affected systems while they were unavailable, we are extending the deadlines for all regulatory filings that were due in the affected systems between June 9, 2023 and June 29, 2023 until Friday, June 30, 2023.[3] We note that we have provided for a longer extension for these filings than initially contemplated in the June 13 Public Notice in anticipation of high traffic volumes on these systems in the coming days. In that regard, we encourage filers to consider deferring discretionary filings this week, and we encourage filers preparing large submissions to coordinate in advance with staff of the Bureaus. We hereby waive the Commission's rules to the extent necessary to effectuate this extension. This Public Notice does not extend the deadlines for any comment or filing dates outside of the June 9 to June 29 time period. Requests for extension of time beyond the relief provided here will be considered consistent with the Commission's normal practice.

[1] The query download feature in ULS and ASR, which is used to save the results of a search in a pipe-delimited text (*.txt) file, remains unavailable. While the public may request a query download and will receive an email confirmation that their request has been received, they will not receive a second email containing a link to the query download results. The Commission will update the ULS and ASR websites when the query download feature is available.

[2] Universal Licensing, Tower Construction Notification, E-106, and Antenna Structure Registration Systems Unavailable; Filing Deadlines Extended, Public Notice, DA 23-506 (WTB PSHSB June 13, 2023) (*June 13 Public Notice*).

[3] ULS applications filed under the extended deadlines will be accepted as timely and applicants will not be required to include special information or attachments, seek waivers, or pay waiver fees.

Resuming Paused Historic Preservation Review Periods: For any review periods based on filings made in the TCNS and E-106 systems that were in progress during the period of unavailability, those review periods were paused, or tolled, while the systems were unavailable. Accordingly, review periods will resume as of June 21, 2023.

Responsive Pleadings: To the extent that due dates are extended by this Public Notice for filings to which reply or responsive pleadings are allowed, the actual filing date will trigger the timeframes established by the Commission's rules for reply or responsive pleadings.

Statutory Filing Deadlines: The Commission cannot waive statutory filing deadlines such as those associated with petitions for reconsideration. However, for the purpose of any statutory deadlines applicable to filings required to be made in the affected systems, we consider the Commission to be open for the filing of documents with statutory deadlines beginning on Friday, June 30, 2023, and filings due between June 9, 2023, and June 29, 2023 will be deemed timely filed if filed by June 30, 2023.

Special Temporary Authority (STA): All STAs that expire from June 9, 2023 through June 29, 2023 will now expire on June 30, 2023. All STA applicants should resume normal STA filing procedures as of the date of this Public Notice, which includes electronic filing in ULS for most STA applications and filing in the Electronic Comment Filing System (ECFS) for market-based STAs only. Emergency STA requests that are unable to immediately be filed electronically can still be initially filed by telephone or email.

Pursuant to 47 CFR § 1.3, and their respective delegated authorities, this Public Notice is issued by the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau.

Applicants and licensees with questions may contact FCC Licensing Support via the web or phone at the contact information available on the following page: https://www.fcc.gov/wireless/available-support-services.

-FCC-

PUBLIC NOTICE

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

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

DA 23-530
June 21, 2023

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

PR Docket No. 90-221 and WT Docket No. 02-378

The Region 21 (Michigan)[1] 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Thursday, July 14, 2023. Beginning at 10:00 a.m., the Region 21 800 MHz RPC meeting will convene at Roscommon County Road Commission, 820 E. West Branch Rd, Prudenville, MI 48651.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – May 11, 2023 meeting
- Correspondence
- Review of Applications
  - Old Applications
  - New Applications
- 800 MHz Subcommittee Reports
  - Interoperable Communication Subcommittee
  - Engineering/Technical Subcommittee
  - Ongoing Plan Revision Standing Committee
- Old Business
  - Web Site
  - 4.9 GHz
- New Business
  - Mid-band Non- NPSPAC 800 channels
- Next meeting: Monitor Twp Fire Department, Bay City, MI – September 14, 2023
- Adjourn

Immediately following the 800 MHz RPC meeting, the 700 MHz RPC meeting will convene.

The agenda for the 700 MHz meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – May 11, 2023 meeting
- Correspondence

[1] The Region 21 (Michigan) 700 MHz regional planning area includes all eighty-three counties in the Upper and Lower Peninsulas in the state of Michigan. The Region 21 800 MHz regional planning area consists of all the Upper Peninsula and all counties in the Lower Peninsula except the counties of Allegan, Barrien, Barry, Cass, Kalamazoo, Ottawa, St. Joseph, and Van Buren, which are part of Region 54 (Great Lakes Area).

- Review of Applications
  - Old Applications
  - New Applications
- 700 MHz Subcommittee Reports
  - Interoperable Communications Subcommittee
  - Engineering/Technical Subcommittee
  - Ongoing Plan Revision Standing Subcommittee
- Old Business
- New Business
- Next meeting: Monitor Twp Fire Department, Bay City, MI – September 14, 2023
- Adjourn

The Region 21 RPC meetings are open to the public. All public safety providers in Region 21 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 21 should plan to attend. For more information, please contact:

Keith M. Bradshaw
Chair, Region 21 700 MHz and 800 MHz RPCs
Oakland County Radio Communications Supervisor
1200 N. telegraph Rd, building 16E
Pontiac, MI 48341
Ph: 248-452-9769
bradshawkm@oakgov.com

- FCC -

PUBLIC NOTICE

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

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

DA 23-531
June 22, 2023

Media Bureau Announces LPFM New Station Application Filing Window

Window Open from November 1, 2023 to November 8, 2023

The Media Bureau (Bureau) announces a filing window for applications for low power FM (LPFM) new station construction permits. The filing window will open at 12:01 am EDT on Wednesday, November 1, 2023, and close at 6:00 pm EST on November 8, 2023. The window is available for LPFM proposals in the entire FM band (channels 201-300).

This will be the first LPFM filing window since 2013, and we encourage potential applicants to begin familiarizing themselves with the application process. New applications must be filed electronically on FCC Form 2100, Schedule 318 in the Bureau's Licensing Management System (LMS). Schedule 318 is currently being updated, and the new version will be released in the near future, well in advance of the opening of the filing window. In 2019, the Commission amended its rules and procedures for filing LPFM applications and selecting and licensing competing LPFM applications.[1] The Bureau will provide detailed information about filing procedures and requirements by public notice in advance of the filing window. Interested applicants also may monitor the Audio Division Web Page for information and developments: http://www.fcc.gov/media/radio/lpfm/.

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

- FCC -

[1] *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), *recon. dismissed and denied*, Order on Reconsideration, 35 FCC Rcd 10180 (2020). The changes adopted were designed to reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.

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

In the Matter of	)	
	)	
Chief Joseph Community Services, Inc.	)	Facility ID Nos.: 10815, 10816, 10819
	)	NAL/Acct. No.: 202341420022
Licensee of Stations K25NY-D, Bridgeport,	)	FRN: 0014068431
Washington; K23MU-D, Bridgeport, Washington;	)	LMS File No. 0000204464
K24LM-D, Bridgeport, Washington	)	

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 21, 2023 **Released: June 21, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Chief Joseph Community Services, Inc. (Licensee), for renewal of the licenses for K25NY-D, Bridgeport, Washington; K23MU-D, Bridgeport, Washington; and K24LM-D, Bridgeport, Washington (Stations).[1] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[2] by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand five hundred dollars ($4,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[3] The application for renewal of the Stations' licenses should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of February 1, 2023.[4] However, the Licensee did not file the Application until November 30, 2022. An attachment to the Application indicates that the failure to timely file was due to the fact that the Licensee "had been relying solely on a third party contractor to manage FCC matters" and the "contractor had failed to file their license renewals."[5]

[1] Application of Chief Joseph Community Services, Inc. for Renewal of License, LMS File No. 0000204464 (filed Nov. 30, 2022). K25NY-D, K23MU-D, and K24LM-D are each digital television translators. In this case, as is permitted, the Licensee filed for renewal of the licenses of the Stations in a single renewal application.

[2] 47 CFR § 73.3539(a).

[3] *Id*.

[4] *See* 47 CFR §§ 73.1020, 73.3539(a); *see Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020).

[5] Application, Attach., Statement of Susan Hansen, President, B. W. St. Clair.

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $4,500. In this case, the Licensee failed to file the Application on or before October 3, 2022, as required by section 73.3539(a) of the Rules.[6] The Application was filed on November 30, 2022, over one month late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[7] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[8] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[9] and the Commission has so interpreted the term in the section 503(b) context.[10] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[11]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form or information.[12] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[13]

6. In this case, the Licensee failed to timely file a license renewal application for three (3) stations, as required by section 73.3539(a) of the Rules.[14] In an attachment to the Application, the Licensee's technical representative indicates that the failure to timely file was due to the fact that the Licensee "had been relying solely on a third party contractor to manage FCC matters" and the "contractor had failed to file their license renewals." Upon discovery of its failure to file, the Licensee took steps to hire a new third party entity to assist the Licensee in preparing the Application. We note that inadvertence is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.[15] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[16] we will reduce the forfeiture from the base amount to $1,500 per station for the failure to file a timely renewal application, because, as digital television translators, the

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[6] 47 CFR § 73.3539(a).

[7] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[8] 47 U.S.C. § 312(f)(1).

[9] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[10] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[11] 47 U.S.C. § 312(f)(2).

[12] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[13] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[14] 47 CFR § 73.3539(a).

[15] *Southern California*, 6 FCC Rcd at 4387, para. 3.

[16] *Supra* note 12.

Stations are providing a secondary service.[17] Furthermore, as translators, the Stations are not originating programing, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application includes three (3) stations, the total proposed forfeiture amount is $4,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[18] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[19] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[20]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[21] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[22] Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[23] and sections 1.80 and 0.283(d) of the Commission's Rules,[24] that Chief Joseph Community Services, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE**

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[17] *See, e.g.*, *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (each reducing proposed fine for a late-filed renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333-34, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations . . . . Stations in the low power television service are authorized with 'secondary' frequency use status.").

[18] 47 U.S.C. § 309(k).

[19] 47 U.S.C. § 309(k)(1).

[20] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[21] 47 CFR § 73.3539(a).

[22] For example, we do not find here that the Licensee's operation of the Stations "was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "[t]he number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[23] 47 U.S.C. § 503(b).

[24] 47 CFR §§ 1.80 and 0.283.

in the amount of four thousand five hundred dollars ($4,500) for its apparent willful violation of section 73.3539(a) of the Commission's Rules.[25]

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[26] within thirty (30) days of the release date of this *NAL* Chief Joseph Community Services, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[27] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[28]

- 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).[29] 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

[25] 47 CFR § 73.3539(a).

[26] 47 CFR § 1.80.

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

[28] 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.

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

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

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[30] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[31] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[32]

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.[33]

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Chief Joseph Community Services, Inc., P.O. Box 312,

[30] *See* 47 CFR § 1.1914.

[31] 47 CFR §§ 1.16 and 1.80(g)(3).

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

[33] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

Bridgeport, Washington 98813-0312. A copy shall also be sent to the Station's representative, Susan Hansen, by electronic mail to stcl@comcast.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
Prospect Lions Club, Inc.	)	Facility ID No.: 53669
	)	NAL/Acct. No.: 202341420020
Licensee of Station K07GI-D, Prospect, Oregon	)	FRN: 0015604390
	)	LMS File No. 0000204920

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 21, 2023 **Released: June 21, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Prospect Lions Club, Inc. (Licensee), for renewal of its license for Station K07GI-D, Prospect, Oregon (Station).[1] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[2] by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars ($1,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[3] The application for renewal of the Station's license should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of February 1, 2023.[4] However, the Licensee did not file the Application until December 8, 2022. The Licensee did not provide an explanation for the late filing.

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $1,500. In this case, the Licensee failed to file the Application on or before October 3, 2022,

[1] Application of Prospect Lions Club, Inc. for Renewal of License, LMS File No. 0000204920 (filed Dec. 8, 2022).

[2] 47 CFR § 73.3539(a).

[3] *Id*.

[4] *See* 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020). Because the first day of the month was Saturday, October 1, 2022, the application was not due until the next business day, which was Monday, October 3, 2022. *See* 47 CFR § 1.4(j) (permitting the filing of documents the next business day if the filing date falls on a holiday, which includes weekends).

as required by section 73.3539(a) of the Rules.[5] The Application was filed on December 8, 2022, over two months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[6] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[7] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[8] and the Commission has so interpreted the term in the section 503(b) context.[9] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[10]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form or information.[11] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[12]

6. In this case, the Licensee failed to timely file a license renewal application, as required by section 73.3539(a) of the Rules.[13] The Licensee did not provide an explanation for the late filing. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[14] we will reduce the forfeiture from the base amount to $1,500 for the failure to file a timely renewal application, because, as a digital television translator, the Station is providing a secondary service.[15] Furthermore, as a translator, the Station is not originating programing, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals.

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[5] 47 CFR § 73.3539(a).

[6] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[7] 47 U.S.C. § 312(f)(1).

[8] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[9] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[10] 47 U.S.C. § 312(f)(2).

[11] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[12] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[13] 47 CFR § 73.3539(a).

[14] *Supra* note 12.

[15] *See, e.g.*, *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (each reducing proposed fine for a late-filed renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333-34, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV

(continued….)

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[16] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[17] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[18]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[19] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[20] Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[21] and sections 1.80 and 0.283(d) of the Commission's Rules,[22] that Prospect Lions Club, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars ($1,500)** for its apparent willful violation of section 73.3539(a) of the Commission's Rules.[23]

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[24] within thirty (30) days of the release date of this *NAL*, Prospect Lions Club, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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translator, and television booster stations . . . . Stations in the low power television service are authorized with 'secondary' frequency use status.").

[16] 47 U.S.C. § 309(k).

[17] 47 U.S.C. § 309(k)(1).

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

[19] 47 CFR § 73.3539(a).

[20] For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "[t]he number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[21] 47 U.S.C. § 503(b).

[22] 47 CFR §§ 1.80 and 0.283.

[23] 47 CFR § 73.3539(a).

[24] 47 CFR § 1.80.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[25] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[26]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[27] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (*e.g.*, NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (*e.g.*, NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[28] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

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

[26] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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

[28] *See* 47 CFR § 1.1914.

to sections 1.16 and 1.80(g)(3) of the Rules.[29] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[30]

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.[31]

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Prospect Lions Club, Inc., P.O. Box 102, Prospect, Oregon 97536 and by electronic mail to janet447@earthlink.net. A copy shall also be sent to Station's technical representative, Greg Best, by electronic mail to gbconsulting54@gmail.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[29] 47 CFR §§ 1.16 and 1.80(g)(3).

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

[31] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

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

In the Matter of	)	
	)	
Town of Coulee City	)	Facility ID Nos.: 198094, 198096, 198095
	)	NAL/Acct. No.: 202341420021
Licensee of Stations K10RA-D, Coulee City,	)	FRN: 0003768173
Washington; K11WY-D, Coulee City, Washington;	)	LMS File No. 0000205717
K12RD-D, Coulee City, Washington	)	

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 21, 2023 **Released: June 21, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Town of Coulee City (Licensee), for renewal of the licenses for K10RA-D, Coulee City, Washington; K11WY-D, Coulee City, Washington; and K12RD-D, Coulee City, Washington (Stations).[1] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[2] by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand five hundred dollars ($4,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[3] The application for renewal of the Stations' licenses should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of February 1, 2023.[4] However, the Licensee did not file the Application until December 19, 2022. The Licensee did not provide an explanation for the late filing.

[1] Application of Town of Coulee City for Renewal of License, LMS File No. 0000205717 (filed Dec. 19, 2022). K10RA-D, K11WY-D, and K12RD-D are each digital television translators. In this case, as is permitted, the Licensee filed for renewal of the licenses of the Stations in a single renewal application.

[2] 47 CFR § 73.3539(a).

[3] *Id*.

[4] *See* 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020). Because the first day of the month was Saturday, October 1, 2022, the application was not due until the next business day, which was Monday, October 3, 2022. *See* 47 CFR § 1.4(j) (permitting the filing of documents the next business day if the filing date falls on a holiday, which includes weekends).

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $4,500. In this case, the Licensee failed to file the Application on or before October 3, 2022, as required by section 73.3539(a) of the Rules.[5] The Application was filed on December 19, 2022, over two months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[6] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[7] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[8] and the Commission has so interpreted the term in the section 503(b) context.[9] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[10]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form or information.[11] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[12]

6. In this case, the Licensee failed to timely file a license renewal application for three (3) stations, as required by section 73.3539(a) of the Rules.[13] The Licensee did not provide an explanation for the late filings. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[14] we will reduce the forfeiture from the base amount to $1,500 per station for the failure to file a timely renewal application, because, as digital television translators, the Stations are providing a secondary service.[15] Furthermore, as translators, the Stations are not originating

[5] 47 CFR § 73.3539(a).

[6] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[7] 47 U.S.C. § 312(f)(1).

[8] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[9] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[10] 47 U.S.C. § 312(f)(2).

[11] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[12] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[13] 47 CFR § 73.3539(a).

[14] *Supra* note 12.

[15] *See, e.g.*, *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (each reducing proposed fine for a late-filed renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power Television,*

(continued….)

programing, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application includes three (3) stations, the total proposed forfeiture amount is $4,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[16] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[17] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[18]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[19] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[20] Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[21] and sections 1.80 and 0.283(d) of the Commission's Rules,[22] that the Town of Coulee City, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand five hundred dollars ($4,500)** for its apparent willful violation of section 73.3539(a) of the Commission's Rules.[23]

Television Translator, and Television Booster Stations and Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331, 19333-34, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations . . . . Stations in the low power television service are authorized with 'secondary' frequency use status.").

[16] 47 U.S.C. § 309(k).

[17] 47 U.S.C. § 309(k)(1).

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

[19] 47 CFR § 73.3539(a).

[20] For example, we do not find here that the Licensee's operation of the Stations "was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "[t]he number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[21] 47 U.S.C. § 503(b).

[22] 47 CFR §§ 1.80 and 0.283.

[23] 47 CFR § 73.3539(a).

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[24] within thirty (30) days of the release date of this *NAL*, Town of Coulee City **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[25] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[26]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[27] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (*e.g.*, NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (*e.g.*, NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington,

[24] 47 CFR § 1.80.

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

[26] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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

DC 20554.[28] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[29] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[30]

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.[31]

[28] *See* 47 CFR § 1.1914.

[29] 47 CFR §§ 1.16 and 1.80(g)(3).

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

[31] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Town of Coulee City, 501 W. Main, P.O. Box 398, Coulee City, Washington 99115. A copy shall also be sent to the Stations' technical representative, Susan Hansen, by electronic mail to stcl@comcast.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

ORDER

Adopted: June 21, 2023 **Released: June 21, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates R.M. Greene, Inc. aka Beam (Beam) as an eligible telecommunications carrier (ETC) for purposes of receiving Rural Digital Opportunity Fund (RDOF) support, conditioned upon, and limited by, its authorization to receive this support, and effective only upon such authorization.[1] In making this ETC designation, the Bureau finds that Beam meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Federal Communications Commission (Commission) rules.[2]

II. BACKGROUND

A. Section 214 Transfer of Assets to Beam

2. The Bureau takes this action in conjunction with the Bureau's approval of an application filed by Point Broadband Fiber Holding, LLC (Point Broadband) and Beam (collectively, Applicants), pursuant to section 214 of the Act, and sections 63.03-63.04 of the Commission's rules, requesting consent for the partial transfer of Point Broadband's domestic section 214 authorization, in connection with Point Broadband's RDOF support for certain census blocks in Alabama in Study Area Code (259050) (Assigned Census Blocks) and related facilities in addition to all rights, obligations, and conditions associated with the receipt of the support.[3] Pursuant to the terms of the approved transaction

[1] *See* R.M. Greene, Inc., Petition for Designation as a Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, Docket No. 09-197 (Sept. 21, 2022) (ETC Petition), as supplemented, Letter to Marlene H. Dortch, Secretary, FCC from Joan Budd, General Counsel, R.M. Greene, Inc. and K.C. Halm and John C. Nelson, Jr., Counsel, Davis Wright Tremaine LLP (Oct. 14, 2022) (ETC Supplement).

[2] 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

[3] *See Domestic Section 214 Application Granted for the Acquisition of Certain Authorizations of Point Broadband Fiber Holdings, LLC by R.M. Greene, Inc. aka Beam*, WC Docket No. 22-344, Public Notice, DA 23-537 (WCB rel. Jun. 21, 2023) (*214 Transfer Public Notice*); Application of Point Broadband Fiber Holding, LLC and R.M. Greene, Inc. aka Beam for Partial Assignment of Domestic Section 214 Authorization, WC Docket No. 22-344 (filed Sept. 21, 2022) (214 Transfer Application). Applicants filed supplements to the Application on December 6, 2022, December 13, 2022, December 22, 2022, and March 6, 2023. Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, and Stephen Coran, Counsel for Point Broadband Fiber Holding, LLC, to Marlene H. Dortch, Secretary, FCC (filed Dec. 6, 2022); Letter from Stephen Coran, Counsel for Point Broadband Fiber Holding, LLC, (continued….)

and conditioned upon Beam's future authorization, Beam will acquire $892,797.21 in annual RDOF support in exchange for a commitment to serve 3,420 locations in the Assigned Census Blocks.[4]

3. This support was originally part of a larger RDOF award that the Bureau authorized Point Broadband to receive, and accordingly, Point Broadband will, after the consummation of the transaction, retain all RDOF-and ETC-related obligations in all authorized areas not assigned to Beam.[5] In its ETC petition, Point Broadband states that it will relinquish its ETC designation for the Assigned Census Blocks (but retain its ETC designation in Alabama for other supported areas) upon Beam's assumption of RDOF obligations in the Assigned Census Blocks.[6] In their 214 Transfer Application, Applicants state that after the consummation of the transaction, Beam will undertake deployment of the RDOF-supported network in the Assigned Census Blocks and integrate such activities and operations into its operations in eastern Alabama.[7]

B. Lifeline Requirements

4. The Lifeline program provides support to reimburse providers for offering supported services at discounted prices to qualifying low-income households, with more support available for households on Tribal lands.[8] Eligible services include voice and broadband Internet access service meeting certain requirements.[9] In a given geographic area, a carrier may be designated as an ETC and become eligible to receive funding from both the high-cost and low-income components of the Universal Service Fund (USF).[10] All ETCs must offer Lifeline-supported services throughout their designated service areas.[11]

C. Requirements for FCC ETC Designation

5. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support."[12] Under section 214(e), an ETC is a "common carrier" that "offer[s] the services that are supported by the Federal universal service support mechanisms under section 254(c),"[13] as established by the

(Continued from previous page)
to Marlene H. Dortch, Secretary, FCC (filed Dec. 13, 2022); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed Dec. 22, 2022); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed Mar. 6, 2023).

[4] *See* 214 Transfer Application at 2 and Exh. 1, List of Assigned Census Blocks. The Bureau has confirmed that this is the correct amount of RDOF support and the correct defined deployment obligations associated with the Assigned Census Blocks, which comprise 21 census block groups.

[5] Rural Digital Opportunity Fund Support Authorized for 466 Winning Bids, Public Notice, DA 21-1158 (WCB/OEA/RBATF Sept. 15, 2021).

[6] *See* ETC Petition at 1.

[7] *See* 214 Transfer Application at 6.

[8] *See Lifeline and Link Up Reform and Modernization et al*., WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012).

[9] *Lifeline and Link Up Reform and Modernization et al*., WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3972, paras. 30-32 (2016) (*Lifeline Modernization Order*).

[10] *Id.* at 3974, 4074-75, paras. 35, 311-12 (requiring all high-cost support recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

[11] *See* 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); *see also Lifeline Modernization Order*, 31 FCC Rcd at 3972, 4071-72, paras. 30-32, 297, 299-301.

[12] 47 U.S.C. § 254(e).

Commission.[14] A petitioner offering voice service, regardless of the technology used to provision that service, may be treated as a "telecommunications carrier" under Title II of the Act (and so become eligible to receive an ETC designation) if it "voluntarily 'holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements.'"[15]

6. Section 214 of the Act gives primary authority for ETC designations to state commissions.[16] The Commission has authority to designate a carrier as an ETC only when "a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."[17] The petitioning carrier must demonstrate that the Commission has jurisdiction and may do so by submitting an "affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."[18] However, "[i]f a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff [will] consider such a statute relevant" in determining Commission jurisdiction.[19]

7. A petition for ETC designation by the Commission must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act (which service must be offered on a common carriage basis); (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;[20] (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of

(Continued from previous page)

[13] *Id*. at § 214(e); *id.* § 153(11) (defining "common carrier" or "carrier" in relevant part, as "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").

[14] 47 U.S.C. § 254(c). Section 254(c) requires that the Commission "establish periodically," the services supported by universal service, "taking into account advances in telecommunications and information technologies and services." *Id.* The Commission has defined voice as the only supported service. 47 CFR § 54.101(a). This definition is "technologically neutral," allowing "ETCs to provision voice service over many platforms." *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, 17692, paras. 77-78 (2011).

[15] *IP-Enabled Services; E9-1-1 requirements for IP-Enabled Service Providers,* WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10268, para. 38 n.128 (2005), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

[16] 47 U.S.C. § 214(e)(2) (providing, in relevant part, that a state commission "shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission"); *id*. § 214(e)(1) (providing that "a common carrier designated under section 214(e)(2), (3), or (6) . . . shall, throughout the service area for which the designation is received—(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title").

[17] *Id.* § 214(e)(6).

[18] *Federal-State Joint Board on Universal Service et al*., CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000); *see* 47 U.S.C. § 214(e)(6).

[19] *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6697 (WCB 2018) (*Phase II Auction ETC Guidance Public Notice*). The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests. *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications* Act, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

[20] 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

general distribution;[21] (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;[22] and (5) a certification that neither the petitioner, nor any party to the petitioner's application for any new, modified, and/or renewed instrument of authorization from the Commission, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.[23]

8. In addition, a petitioner must demonstrate its ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive RDOF support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.[24]

9. Prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must also determine whether such designation is in the public interest.[25] When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner's service offering.[26]

D. Petition for ETC Designation

10. We specify that Beam's ETC designation will cover all eligible census blocks approved for assignment to Beam in the *214 Transfer Pubic Notice* and assigned to Beam upon consummation of the transaction, subject to and limited by its authorization to receive support (designated service area).[27] On October 20, 2022, the Bureau released a Public Notice seeking comment on the 214 Transfer Application and the ETC Petition.[28] The Bureau did not receive comments or petitions in opposition to the ETC Petition.

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[21] 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

[22] An ETC's "service area" is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC's service area and an incumbent rural telephone company's service area, the Commission has separately forborne from imposing such requirements on RDOF support recipients. *See RDOF Order*, 35 FCC Rcd at 728, paras. 93-94. These waivers are predicated upon the finding that the need for such requirements is obviated by the specific service quality standards applicable to support recipients and specific reporting obligations relating to such standards.

[23] 21 U.S.C. § 862; 47 CFR § 1.2002(a)–(b).

[24] 47 CFR § 54.202(a). We note that, for petitioners seeking ETC designation for the purpose of becoming authorized to receive RDOF support, the Commission has waived certain section 54.202 requirements, including the requirement that the petitioner submit a five-year service plan and proof of compliance with consumer protection and service quality standards. *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888, 13901 n.71 (RBATF, OEA, WCB 2020*)* (extending to RDOF long form applicants the same waivers of section 54.202 requirements as provided to Auction 903 long form applicants under the same rationales); *Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6699-700; 47 CFR §§ 54.804, 54.806. Because Beam is subject to RDOF reporting obligations and other requirements pursuant to this designation conditioned upon its authorization for RDOF support, we extend this same waiver to Beam.

[25] 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

[26] *See, e.g.*, *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

[27] *See* Results, Long-Form Applicants Spreadsheet at https://www.fcc.gov/auction/904/round-results.

[28] *See Wireline Competition Bureau Seeks Comment on R.M. Greene, Inc. aka Beam's Rural Digital Opportunity Fund Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket 09-197, DA 22-1110 (WCB rel. Oct. 20, 2022).

III. DISCUSSION

11. After considering all arguments raised in its ETC Petition, we find that Beam has satisfied the statutory requirements of sections 254 and 214(e) of the Act for designation as an ETC, and the Commission's requirements for ETC designation. We therefore designate Beam as an ETC in the designated service area. In this area, Beam must meet RDOF requirements, Lifeline requirements, and all other requirements attendant to its ETC designation, as specified in the Act and the Commission's rules.[29]

A. Satisfaction of ETC Requirements

12. *Commission Authority*. Beam demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. It has submitted an affirmative statement from the Alabama Public Service Commission declining to assert jurisdiction over this ETC designation in the designated service area because state regulation specifically excludes from state jurisdiction the regulation of broadband and Voice over Internet Protocol (VoIP) services (the services that Beam will use to meet its public interest obligations).[30] Accordingly, we find that the Bureau, acting under the Commission's delegation of authority, may designate Beam as an ETC upon a finding that Beam meets all eligibility requirements for ETC designation.

13. *Offering the Service Supported by the Universal Service Support Mechanisms*. Beam establishes through the required certifications and related filings that it qualifies as a telecommunications provider for purposes of receiving universal service support for which it may become eligible pursuant to the requested designation and that it will offer the service supported by the federal universal service support mechanisms.[31] Specifically, Beam has committed to offering voice service on a common carrier basis and has specified that its voice service meets the requirements of section 54.101(a) of the Commission's rules.[32] Consistent with Commission guidance to authorized RDOF support recipients, Beam must offer this service as of the first day of the month following the authorization.[33]

14. *Compliance with the Service Requirements Applicable to RDOF Support Recipients*. Beam establishes its ability to comply with service requirements applicable to the support that it receives.[34] This determination considers the Bureau's findings in the *214 Transfer Public Notice* that Beam has demonstrated the technical, financial, and managerial capability to provide voice and broadband services meeting or exceeding RDOF standards, as well as its commitments in its ETC Petition to meeting relevant public interest obligations and complying with all statutory and regulatory requirements for receiving universal service support.[35] As a condition of authorization, Beam must satisfy

[29] 47 CFR § 54.202(a)(1)(i); *id*. § 54.101.

[30] ETC Supplement at Exh.1, Copy of Letter from Alabama Public Service Commission (Letter from John A. Gardner, Exec. Dir., Alabama Public Serv. Comm'n, to Joan Budd, General Counsel, R.M. Greene, Inc. aka Beam) (Oct. 13, 2022)) (declining to exercise jurisdiction over Beam's ETC designation)); *see also* Ala. Code § 37-2A-4 (stating that "the Alabama Public Service Commission shall not have any jurisdiction, right, power, authority, or duty to regulate, supervise, control, oversee, or monitor, directly or indirectly, the rates, charges, classifications, provision, or any aspect of broadband service, broadband enabled services, VoIP services, or information services").

[31] *Id*. at 4-5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

[32] ETC Petition at 5-6; 47 U.S.C. § 214(e)(1), (6); 47 CFR § 54.101(a) (eligible voice telephony service must provide voice grade access to the public switched telephone network or its functional equivalent).

[33] *See Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 745, para. 139 (2020) (*RDOF Order*) (stating that a newly-authorized recipient of RDOF support should be prepared to provide voice service throughout its service areas, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of the month after authorization).

[34] 47 CFR §§ 54.101(d), 54.202(a)(1)(i), 54.805.

[35] *See 214 Transfer Public Notice* at 4-5; ETC Petition at 4-5, 8.

certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.[36]

15. *Compliance with Service Requirements Applicable to Lifeline Services*. Beam commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.[37] We emphasize that all ETCs receiving Lifeline support must report certain information to the Commission, the Universal Service Administrative Company (USAC), and the local regulatory authority, pursuant to section 54.422 of the Commission's rules.[38]

16. *Offering the Supported Services Using a Carrier's Own Facilities*. Beam certifies that it will offer supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.[39] Facilities are the ETC's "own" if the ETC has an exclusive right to use the facilities to provide the supported services or when service is provided by any affiliate within the same holding company structure.[40] An ETC may satisfy its obligation to "offer" supported voice service (or its functional equivalent, including interconnected VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.[41] Instead, the ETC must remain legally responsible, through a managed service solution, for ensuring that the service meets consumer protection and service quality standards.[42]

17. *Advertising Supported Services*. Beam commits to advertising the availability of the supported services and related charges using media of general distribution.[43] We emphasize that, as part of this commitment, Beam must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.[44]

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[36] *Id*. § 54.806 (providing that RDOF support recipients are subject to sections 54.313, 54.314, and 54.316 of the Commission's rules); *id*. § 54.313 (requiring annual report including certifications as to rates, functionality, and deployment, among other things); *id*. § 54.314 (requiring annual certification stating that all federal high-cost support provided was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended); *id*. § 54.316 (requiring build-out milestone reporting).

[37] ETC Petition at 7; 47 CFR § 54.400 et seq.

[38] 47 CFR § 54.422; *see also id*. § 54.410.

[39] ETC Petition at 8; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

[40] *See Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6698; *see also* 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

[41] *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699 (citing *Connect America Fund et al*., WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1387-88, para. 20 (2018) (rejecting arguments contending that "because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service," and requiring carriers to "offer VoIP over their broadband network on a standalone basis")); *cf. Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7224 n.21 *(*WCB 2013) (explaining that a broadband provider would be considered to be providing voice service if it did so through an affiliated competitive local exchange company or "through a managed voice solution obtained from a third party vendor … , so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers")).

[42] *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699.

[43] ETC Petition at 8; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

[44] 47 CFR § 54.405.

18. *Ability to Remain Functional in Emergency Situations*. Beam states that it can remain functional in emergency situations.[45] Beam states that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.[46]

19. *Anti-Drug Abuse Act Certification*. Beam submits a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.[47]

B. Public Interest Analysis

20. Based on the information, representations, and certifications in the ETC Petition and consistent with the Bureau's findings in the *214 Transfer Public Notice*, we find that Beam has demonstrated that its designation as an ETC serves the public interest and would provide numerous benefits to consumers.[48] Long-standing Commission precedent has explained that the public interest inquiry in the ETC context is a cost-benefit analysis focusing on the petitioner's efficiencies, the benefits of competition, the public benefits of service, and the fundamental principles of USF, all of which we find are sufficiently addressed in the 214 Transfer Application and the ETC Petition.[49] The Bureau has determined that service to the designated service area will bring social and economic benefits in terms of accelerated access to advanced services meeting specific performance requirements.[50] In addition, Beam will provide service and meet program requirements, subject to close oversight,[51] default consequences, and potentially, forfeiture and other penalties;[52] this helps ensure that Beam will meet its obligation to provide ubiquitous service throughout the study area at rates and on terms that are reasonably comparable to those associated with comparable service offerings in urban areas.

21. In conclusion, and based on the information, representations, and certifications in its 214 Transfer Application and ETC Petition, we find that Beam has met all applicable conditions and prerequisites for ETC designation and that designation serves the public interest. Accordingly, we

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[45] ETC Petition at 7.

[46] *Id*.; 47 CFR § 54.202(a)(2).

[47] ETC Petition at 9; 47 CFR § 1.2002.

[48] *See* ETC Petition at 8-9; *214 Transfer Public Notice* at 3, 5-6.

[49] *See* ETC Petition at 8-9; *214 Transfer Public Notice* at 3, 5-6; *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6388-89, para. 40 (2005) ("The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas."); *id*. at 6389, para. 41 (where the Commission has jurisdiction, it will conduct a cost-benefit analysis that includes consideration of a variety of factors, including "the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.").

[50] *See 214 Transfer Public Notice* at 5-6.

[51] *See RDOF Order*, 35 FCC Rcd at 702-04, paras. 31-36 (setting public interest obligations for RDOF support recipients); *id*. at 709-712, paras. 45-55 (adopting service milestone requirements); *id*. at 712-713, paras. 56-57 (adopting reporting requirements); 47 §§ CFR 54.802, 805-806.

[52] *See RDOF Order*, 35 FCC Rcd at 713-716, paras. 58-64 (adopting non-compliance measures); *id.* at 715-716, para. 63 (stating that in addition to default consequences, RDOF support recipients are subject to sanctions "including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment"); 47 CFR §§ 54.320(c), 54.803(c).

designate Beam as an ETC for purposes of becoming eligible to receive RDOF support associated with the designated service area.

C. Regulatory Oversight

22. Under section 254(e) of the Act, an ETC must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[53] Under section 214(e) of the Act, an ETC must provide supported services throughout the designated service area for which it receives an ETC designation.[54] When and if the ETC is authorized to receive high-cost support, it must file an annual certification for each state in which it receives support that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.[55] The Commission conditions future support awarded through the high-cost program on the filing of such certification.[56]

23. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its qualifying voice or broadband services by the amount of the support for the eligible consumer.[57] In addition, it must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.[58]

24. We find that reliance on Beam's commitments to meet these and other regulatory requirements in its 214 Transfer Application and in its ETC Petition is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Beam and will commit to satisfying its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

25. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support received is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas for which the relevant ETC(s) have been designated.[59] The ETC must provide such records and documentation to the Commission and USAC upon request.[60] If Beam fails to fulfill the requirements of the Act, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.[61] The Commission also may assess forfeitures for violations of Commission rules and orders.[62] We note that the Commission has recently announced a

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[53] 47 U.S.C. § 254(e).

[54] *Id*. § 214(e).

[55] 47 CFR § 54.314(b).

[56] *Id*.

[57] *See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

[58] 47 CFR § 54.422(b)(3); *see also id*. §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that it will comply with all federal Lifeline certification procedures).

[59] 47 U.S.C. §§ 220, 403.

[60] 47 CFR § 54.417.

[61] *Id*. § 54.806(b) (providing that RDOF support recipients are subject to the compliance measures, recordkeeping requirements, and audit requirements set forth in section 54.320(a)-(c) of the Commission's rules); *id*. § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

new program, the Rural Broadband Accountability Plan (RBAP), that will increase audits, verifications, and transparency for USF high-cost programs, including RDOF.[63] With the establishment of RBAP, RDOF recipients, like other high-cost recipients, will be subject to a high level of accountability as they work to meet applicable performance requirements and benchmarks.

26. As the Bureau has previously explained, a carrier that cannot appropriately use universal service support must relinquish its ETC designation pursuant to section 214(e)(4) of the Act and section 54.205 of the Commission's rules.[64] For ETCs designated by the Commission, the ETC must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission's Electronic Comment Filing System (ECFS). The Bureau will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.[65] The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at hcorders@usac.org. A carrier that intends to discontinue service must first seek authorization to discontinue service under section 63.71 of the Commission's rules.[66] In addition, 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 (including any authorization to receive RDOF support) 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.[67] Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.[68] 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.

IV. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, R.M. GREENE, INC. AKA BEAM IS DESIGNATED an Eligible Telecommunications Carrier in its designated service area.

28. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the Universal Service Administrative Company and to the Alabama Public Service Commission.

(Continued from previous page)

[62] *See* 47 U.S.C. § 503(b).

[63] Fact Sheet: Rural Broadband Accountability Plan (rel. Jan. 28, 2022).

[64] *Id*. § 214(a); 47 CFR § 54.205. *See, e.g.*, *Connect America Phase II Support Authorized for Six Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 12869, 12874 (RBAFT, OEA, WCB 2020) (summarizing ETC obligations relating to relinquishment); *Connect America Phase II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, 4720-30 (RBAFT, OEA, WCB 2019).

[65] 47 U.S.C. § 214(e)(4).

[66] 47 CFR § 63.71.

[67] 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.04; *Connect America Phase II Support Authorized for Six Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 12869, 12874-75 (RBAFT, OEA, WCB 2020) (summarizing ETC obligations relating to transfers of control); *Connect America Phase II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, 4730 (RBAFT, OEA, WCB 2020).

[68] 47 CFR § 63.24.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

PUBLIC NOTICE

Federal Communications Commission
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DA 23-537
Released: June 21, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF CERTAIN AUTHORIZATIONS OF POINT BROADBAND FIBER HOLDING, LLC TO R.M. GREENE, INC. AKA BEAM

WC Docket No. 22-344

By this Public Notice, the Wireline Competition Bureau grants an application filed by Point Broadband Fiber Holding, LLC (Point Broadband), and R.M. Greene, Inc. aka Beam (Beam) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission's rules,[1] for the partial transfer of Point Broadband's domestic section 214 authorization, in conjunction with Point Broadband's Rural Digital Opportunity Fund (RDOF) support obligations for certain of its designated census blocks in Alabama, in a single Study Area Code (259050) (Assigned Census Blocks).[2]

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

[2] *See* generally Application of Point Broadband Fiber Holding, LLC and R.M. Greene, Inc. aka Beam for Partial Assignment of Domestic Section 214 Authorization, WC Docket No. 22-344 (filed Sept. 21, 2022) (Application); *see also id.* at Exh. 1 (List of Assigned Census Blocks). Applicants state that there are 21 eligible census blocks comprising 3,420 locations in Alabama that make up the Assigned Census Blocks. *Id.* Applicants filed supplements to the Application on December 6, 2022, December 13, 2022, December 22, 2022, and March 6, 2023. Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, and Stephen Coran, Counsel for Point Broadband Fiber Holding, LLC, to Marlene H. Dortch, Secretary, FCC (filed Dec. 6, 2022) (First Supplement); Letter from Stephen Coran, Counsel for Point Broadband Fiber Holding, LLC, to Marlene H. Dortch, Secretary, FCC (filed Dec. 13, 2022) (Second Supplement); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed Dec. 22, 2022) (Third Supplement); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed Mar. 6, 2023) (Fourth Supplement); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed June 15, 2023) (Fifth Supplement). On December 19, 2022, the Bureau released a Public Notice seeking comment on the Application. *See Domestic Section 214 Application Filed for the Transfer of Control of Certain Authorizations of Point Broadband Fiber Holding, LLC To R.M. Greene, Inc. aka Beam*, WC Docket No. 22-344, Public Notice, DA 22-1344 (WCB Dec. 19, 2022). The Bureau did not receive comments or petitions in opposition to the Application. Separately, Beam filed a Petition for Designation as an Eligible Telecommunications Carrier (ETC). *See* R.M. Greene, Inc., Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, Docket No. 09-197 (Sept. 21, 2022) (ETC Petition), as supplemented, Letter to Marlene H. Dortch, Secretary, FCC, from Joan Budd, General Counsel, R.M. Greene, Inc. and K.C. Halm and John C. Nelson, Jr., Counsel, Davis Wright Tremaine LLP (Oct. 14, 2022). *See Wireline Competition Bureau Seeks Comment on R.M. Greene, Inc. aka Beam's Rural Digital Opportunity Fund Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket No. 09-197, Public Notice, DA 22-1110 (rel. Oct. 20, 2022) (*ETC Public*

Applicants and Description of Transaction

Point Broadband, a Delaware limited liability company, is indirectly owned by GTCR Fund XIII/B LP (68.4%) and GTCR Fund XIII/C LP (27.8%), both Delaware entities that are ultimately controlled by Mark M. Anderson, Craig A. Bondy, Aaron D. Cohen, Sean L. Cunningham, Benjamin J. Daverman, David A. Donnini, Dean S. Mihas, and Collin E. Roche, who are all U.S. citizens.[3] Point Broadband itself and through its wholly-owned subsidiaries offers telecommunications services pursuant to section 214 authorizations in Tennessee and Virginia.[4] The companies also provide voice over Internet Protocol (VoIP) service in Alabama, Georgia, Maryland, Michigan, Ohio, and New York.[5] They offer symmetrical gigabit broadband services to over 60,000 total subscribers.[6] Point Broadband does not provide local exchange service in the Assigned Census Blocks.[7] Point Broadband is an Eligible Telecommunications Carrier (ETC) for its RDOF census blocks in Alabama.[8] On September 15, 2021, the Bureau authorized Point Broadband to receive $51,040,733.50 in RDOF support for an estimated 21,818 locations in Alabama.[9]

Beam, an Alabama corporation, is owned (49.8%) by Lynne G. Frakes, a U.S. Citizen, and Janie M. Greene Trust (Trust) (49.8%).[10] The sole trustee of the Trust is Lynne G. Frakes.[11] No other individual or entity holds 10% or more of Beam.[12] Beam provides cable, broadband, and VoIP services using a mix of fiber and coaxial cable.[13] Its plant covers approximately 1,500 miles, about 400 miles of which are fiber, serving five different franchise areas in Alabama, including Phenix City, Smiths Station, Hurtsboro, Russell County, and Lee County.[14] Combined, these areas total approximately 55,000 homes passed.[15] Beam is not currently a recipient of either Connect America Fund or RDOF support, and it does

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Notice). Any action on this domestic section 214 application is without prejudice to Commission action on other pending applications.

[3] Application at 12-13; Second Supplement at 1.

[4] Application at 3.

[5] *Id.*

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

[7] *Id.* at 4.

[8] *Id.*; *Telecommunications Carrier Eligible for Universal Service Support*, WC Docket Nos. 09-197, 10-90, Order, 36 FCC Rcd 9384 (WCB 2021) (designating Point Broadband as an ETC).

[9] Application at 4; *see also Rural Digital Opportunity Fund Support Authorized for 466 Winning Bids,* AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 13574, 13581 and Attach. A (WCB Sept. 15, 2021) (*RDOF Public Notice*) ("ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Communications Act of 1934, as amended, or to engage in the sale of assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications. Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules. Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs."). The Authorization Public Notice also authorized Point Broadband to receive RDOF support for designated areas in Georgia, Michigan, New York, and Virginia. *RDOF Public Notice*, 36 FCC Rcd at Attach. A.

[10] Application at 13-14.

[11] *Id*. at 14.

[12] *Id*.

[13] *Id*. at 4

[14] *Id*.

[15] *Id*.

not receive any other high-cost support from the Universal Service Fund.[16] On September 21, 2022, Beam filed a petition for designation as an ETC for the Assigned Census Blocks with the Commission.[17]

Pursuant to the terms of the proposed transaction, subject to grant of the Application and designation of Beam as an ETC, Beam would acquire the interests of and assume Point Broadband's RDOF obligations in the Assigned Census Blocks.[18] For the Assigned Census Blocks, if approved, Beam would receive $892,797.21 in annual RDOF support for 3,420 locations.[19] Applicants state that after consummation of the transaction, Beam will undertake deployment of the RDOF-supported network and integrate such activities and operations into its own ongoing operations in Eastern Alabama.[20]

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.[21] They state that Beam "has longstanding experience and expertise deploying broadband networks in the areas covered by the Assigned Census Blocks and is therefore uniquely situated to efficiently deploy RDOF-supported voice and broadband service in the Assigned Census Blocks."[22] Applicants contend that "[b]ecause Point Broadband's RDOF areas are adjacent to or nearby Beam's existing operations, Beam can achieve economies of scale and leverage its labor force, infrastructure, and operational capabilities to rapidly and cost-effectively build out the Assigned Census Blocks as it expands its broadband operations."[23] They state that "the transaction will not result in any adverse alteration to the buildout plans Point Broadband submitted to the Commission for the Assigned Census Blocks as part of its long-form application," and consumers will likely receive RDOF services more quickly.[24] For these reasons, Applicants argue that "[t]he transaction . . . will serve the public interest because it will not result in any harms to either company's existing customers and will accelerate Beam's ongoing efforts to expand broadband service to unserved and underserved rural areas of Eastern Alabama."[25] Finally, Applicants represent that "Beam has both the necessary managerial and technical experience and requisite financial means to assume the responsibility of deploying RDOF-supported voice and broadband service in the Assigned Census Blocks it proposes to assume from Point Broadband."[26]

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.[27] We then employ a

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[16] Application at 5.

[17] ETC Petition; *ETC Public Notice*; *see also* First Supplement.

[18] Application at 5-6.

[19] *Id*. at 5.

[20] *Id*. at 6.

[21] *Id*. at 7.

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

[23] *Id*. at 8.

[24] Application at 8-9.

[25] *Id*. at 9.

[26] *Id*. at 7.

[27] *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*

balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[28] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[29]

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a reduction of competition. Applicants state that "[a]t present, there are no subscribers of Point Broadband in the Assigned Census Blocks."[30] For this reason, Applicants contend that "the transaction will not result in any loss or impairment of service for either of the Applicants' subscribers and will have no adverse effects upon competition anywhere in the United States."[31] Further, Applicants state that the proposed transaction will be transparent to the customers of the Applicants, who will continue to be served pursuant to each Applicant's existing operations and existing terms and conditions,[32] and therefore, we expect no harm to existing customers to result from the transaction.

Second, Beam remains financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF funding in accordance with the Commission's pre-transaction approval of Point Broadband's application for support, and we expect that the proposed transaction will not negatively impact these obligations.[33] Indeed, Applicants have confirmed that "the transaction will not result in any adverse alteration to the buildout plans Point Broadband submitted to the Commission for the Assigned Census Blocks as part of its long-form application,"[34] and that the proposed transaction will "accelerate Beam's ongoing efforts to expand broadband service to unserved and underserved rural areas of Eastern Alabama."[35] There is nothing in the record to indicate that Beam, a long-standing communications provider in Alabama, is not qualified to efficiently manage the obligations associated with the RDOF funding.[36] Applicants state that "Beam commits to meeting the buildout milestones and performance obligations established for the Assigned Census Blocks, including the upcoming 40 percent buildout milestone."[37] Applicants further state that

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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*)).

[28] *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).

[29] *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).

[30] Application at 2-3.

[31] *Id.* at 3; *see also id.* at 9.

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

[33] *Id.* at 9; *see also id.* at Attach., para. 5 (Certification of Mal Waldrep).

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

[35] *Id*. at 9.

[36] *See* Application at 4-5 and Exh. 3 (describing Beam's operations and management credentials); Fourth Supplement (filing audited financials of the company for the calendar year 2021, subject to a request for confidential treatment); Fifth Supplement (filing audited financials of the company for the calendar year 2022, subject to a request for confidential treatment).

"Beam personnel will be trained on RDOF and ETC compliance obligations prior to the closing on the transaction."[38] Applicants have confirmed that following consummation of the proposed transaction, Beam will continue to have the necessary managerial and operational expertise to meet the additional RDOF commitments it acquires from Point Broadband.[39] Applicants further state that the proposed transaction will not compromise Beam's support obligations through the assumption of debt.[40] In addition, Beam will be subject to ongoing oversight and must comply with annual reporting and certification requirements.[41] 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.[42] Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.[43] 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.[44]

According to Applicants, "[s]ince becoming authorized to receive RDOF support, Point Broadband realized that the Assigned Census Blocks might be served in a more expeditious and cost-effective manner by Beam given its proximity to the Assigned Census Blocks and its existing fiber and coaxial cable plant, operations, resources, and infrastructure."[45] Applicants contend that "[b]ecause Point Broadband's RDOF areas are adjacent to or nearby Beam's existing operations, Beam can achieve economies of scale and leverage its labor force, infrastructure, and operational capabilities to rapidly and cost-effectively build out the Assigned Census Blocks as it expands its broadband operations."[46] We find it likely that the proposed transaction would result in some increased efficiency that could benefit consumers.

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,[47] and accelerating private sector deployment of advanced services is one of the aims of the Act.[48] In light of the Applicants' commitments to meet all of Point Broadband's RDOF obligations[49] and the fact that Applicants are prepared to devote additional capital to accelerate facilities-based service offerings,[50] we find it likely that the proposed transaction would result in some public

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[37] Application at 9.

[38] *Id.*

[39] *See id.* at 7-8; *see also id.* at Attach., para. 3 (Certification of Mal Waldrep).

[40] *Id.* at 8, 9. Beam acknowledges that it will need to submit and have approved by USAC an irrevocable letter of credit and bankruptcy opinion letter for the Assigned Census Blocks. *Id.* at 6; *see also* Third Supplement (filing Letter of Credit Standby Commitment Letter by Synovus bank for the benefit of R.M. Greene, Inc., subject to a request for confidential treatment).

[41] *See RDOF Public Notice* at 1-9 (listing obligations of authorized support recipients).

[42] *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

[43] *See id*. at 9237-38, paras. 275-76.

[44] *See id*.

[45] Application at 8.

[46] *Id.*

[47] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[48] *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")).

[49] Application at 9, Attach. at para. 5 (Certification of Mal Waldrep).

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.[51]

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant of the Application is effective upon release of this Public Notice.[52] 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 about the domestic section 214 transfer of control, please contact Christi Shewman, Wireline Competition Bureau, Competition Policy Division, (202) 418-0646.

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[50] *Id*. at 8.

[51] *See RDOF Public Notice* at 1-9 (listing obligations of authorized support recipients).

[52] We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 22-344 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
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. 23-538

Report No. TEL-02285 **Thursday June 22, 2023**

International Authorizations Granted

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

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

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

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

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

Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within 30 (thirty) days of this public notice. See 47 CFR § 1.4(b)(2).

ITC-214-20230519-00066 E volt mobile inc

International Telecommunications Certificate

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

Grant of Authority Date of Action: 06/16/2023

Volt Mobile Inc. (Volt Mobile) filed an application for authority to provide facilities-based services in accordance with section 63.18(e)(1) of the Commission's rules and resale services in accordance with section 63.18(e)(2) of the Commission's rules. 47 C.F.R. §§ 63.18(e)(1), (2).

Volt Mobile, a Delaware corporation, is owned by four individuals, all U.S. citizens: Joseph Samara (25%), Ali Samara (25%), Karim Hamed (25%), and Kairm Zahrieh (25%).

ITC-T/C-20230522-00067 E PRESTO WIRELESS CORP.

Transfer of Control

Grant of Authority Date of Action: 06/16/2023

Current Licensee: PRESTO WIRELESS CORP.

FROM: Presto Holdings, LLC

TO: Presto Holdings, LLC

Presto Wireless Corp. (PWC), a New York corporation that holds an international section 214 authorization, ITC-214-20221202-00146, has filed an application seeking the Commission's consent to the transfer of control of PWC from Israel Max to Noah Issacs. PWC is a direct wholly owned subsidiary of Presto Holdings, a Delaware limited liability company. Israel Max, a U.S. citizen, is currently the sole owner of Presto Holdings. Noah Isaacs has entered into an agreement to acquire 100% of the ownership interests in Presto Holdings from Israel Max. Upon consummation, Noah Isaacs, a U.S. citizen, will have indirect ownership and control of PWC.

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

SURRENDER

ITC-214-20060602-00300 BTI America LLC

By letter filed on June 15, 2023, BTI America LLC notified the Commission that it surrendered its international section 214 authorization effective June 15, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

PUBLIC NOTICE

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

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

DA 23-539
Released: June 22, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATIONS GRANTED

WC Docket No. 23-130
WC Docket No. 23-125

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

Interconnected VoIP Numbering Authorization Application filed by 3 Com, LLC. pursuant to section 52.15(g)(3) of the Commission's Rules, WC Docket No. 23-130 (Mar. 8, 2023), Public Notice, DA 23-443 (WCB 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, WC Docket No. 23-125 (Jan. 30, 2023), Public Notice, DA 23-441 (WCB May 24, 2023).

Effective Grant Date: June 22, 2023

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

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[1] *See* 47 CFR § 52.15(g)(3).

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

In re Application of	)	
	)	
Durlyn Broadcasting, Co.	)	NAL/Acct. No. MB-202341410010
	)	FRN: 0009371071
For Renewal of License for	)	Facility ID No. 52737
Station WPNC-FM, Plymouth, North Carolina	)	Application File No. 0000105365

ORDER

Adopted: July 18, 2023 **Released: July 18, 2023**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Durlyn Broadcasting, Co. (Licensee), the licensee for Station WPNC-FM, Plymouth, North Carolina (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application for the Station.[1] In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Public File Rule contained in section 73.3526 of the Commission's rules (Rules)[2] and section 73.3539 of the Rules,[3] which sets forth the filing deadline for license renewal applications.

2. A license renewal application for the 2019-22 Renewal Cycle was due on August 1, 2019.[4] Licensee did not file the 2019 Renewal Application until November 22, 2019. In the 2019 Renewal Application, Licensee disclosed that it had not complied with section 73.3526 of the Rules.[5] The Bureau's review of the Station's online public inspection file revealed that Licensee has not uploaded a single issues and programs list as of the date of this Order.

3. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.3526 and 73.3539 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to make a civil penalty payment to the United States Treasury in the amount of five dollars ($500) (Civil Penalty), implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations, and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

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

[1] Application File No. 0000105365 (filed Nov. 22, 2019) (2019 Renewal Application).

[2] 47 CFR § 73.3526.

[3] *See* 47 CFR § 73.3539.

[4] *See* 47 CFR § 73.3539(a). Licensee was required to file a license renewal application for the 2019-2022 Renewal Cycle even though its license renewal application for the 2011-2014 Renewal Cycle remained pending. *See* Application File No. BRH-20110801AMV (filed Aug. 1, 2011) (2011 Renewal Application). *See also Media Bureau Announces Procedures for 2019-2022 Radio License Renewal Cycle*, Public Notice, 34 FCC Rcd 2304 (MB 2019); *Gerald R. Parks*, Letter Order, DA 23-107 (MB Feb. 7, 2023) (licensee with renewal application pending from prior renewal cycle must file license renewal application for subsequent renewal cycle); *Pollack/Belz Communications Company, Inc.*, Forfeiture Order, 29 FCC Rcd 14635 (MB 2014) (same). Here, the Bureau did not grant the 2011 Renewal Application until May 26, 2023, because of unpaid regulatory fees. *See Durlyn Broadcasting Company*, Order to Pay or Show Cause, 34 FCC Rcd 5273 (MB/OMD 2019); Order to Pay or Show Cause, DA 23-244 (MB/OMD Mar. 22, 2023).

[5] 2019 Renewal Application at Attach. "WPNC renewal exhibit.pdf".

of potential violations of the Rules, and granting the 2019 Renewal Application. Grant shall be conditioned upon Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in paragraph 14 of the attached Consent Decree.

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

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[6] and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,[7] the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

8. **IT IS FURTHER ORDERED** that the application of Durlyn Broadcasting, Co., for renewal of license for Station WPNC-FM, Plymouth, North Carolina (Application File No. 0000105365) **IS GRANTED**, as conditioned herein.

9. **IT IS FURTHER ORDERED** that copies of this Order and Consent Decree shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Durlyn Broadcasting Company, c/o William B. Cox III, 930 Highway 32 South, Plymouth, NC 27962, and to its counsel, Coe W. Ramsey, Esq., Brooks Pierce, 1700 Wells Fargo Capitol Center, 150 Fayetteville Street, Raleigh, NC 27601.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

[7] 47 CFR §§ 0.61, 0.283.

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

In re Application of	)	
	)	
Durlyn Broadcasting, Co.	)	NAL/Acct. No. MB-202341410010
	)	FRN: 0009371071
For Renewal of License for	)	Facility ID No. 52737
Station WPNC-FM, Plymouth, North Carolina	)	Application File No. 0000105365

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Durlyn Broadcasting, Co. (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with sections 73.3539(a) and 73.3526 of the Commission's rules.[1] To resolve this matter, the Licensee agrees to make a pay a civil penalty to the United States Treasury and implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3526.

I. DEFINITIONS

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

(a) "2019 Renewal Application" means the pending application for renewal of license for Station WPNC-FM, Plymouth, North Carolina (Application File No. 0000105365).

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

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

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

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

(f) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with section 73.3526 of the Rules.

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

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

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

(j) "Investigation" means the Bureau's decision to hold and not process the Licensee 's license renewal application due to the Licensee's failure to comply with sections 73.3539(a) and 73.3526 of the Rules.

(k) "Licensee" means Durlyn Broadcasting, Co., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

[1] 47 CFR §§ 73.3526, 73.3539(a).

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

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

(o) "Station" means Station WPNC-FM, Plymouth, North Carolina.

(p) "Violations" means the Licensee's noncompliance with 47 CFR §§ 73.3539(a) and 73.3526 of the Rules.

II. BACKGROUND

3. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[2] A license renewal application for the Station's license for the 2019-22 Renewal Cycle should have been filed by August 1, 2019, the first full business day follow the first day of the fourth full calendar month prior to the Station's license expiration date of December 1, 2019.[3] Licensee filed the 2019 Renewal Application on November 22, 2019.

4. Section 73.3526 of the Rules requires that quarterly issues and programs lists be uploaded to the station's online public inspection file no later than the tenth day after each quarter.[4] It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations. In the 2019 Renewal Application, Licensee disclosed that it had not complied with section 73.3526.[5] The Bureau's review of the Station's online public inspection filed revealed that Licensee has not upload a single issues and programs list.

5. The Bureau and Licensee have negotiated the terms of the Consent Decree that terminates the Investigation into the matters discussed above. As part of the Consent Decree, the Licensee has agreed to maintain a Compliance Plan designed to ensure its future compliance with the Online Public Inspection File Rule noted above for one (1) year after the Effective Date, and to pay a civil penalty of Five Hundred Dollars ($500) to the U.S. Treasury.

III. TERMS OF AGREEMENT

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

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

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

9. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to grant the Licensee's pending 2019 Renewal Application (Application File No. 0000105365). In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

10. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent

[2] 47 CFR § 73.3539(a).

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

[4] 47 CFR § 73.3526.

[5] 2019 Renewal Application at Attach. "WPNC renewal exhibit.pdf".

Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[6]

11. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it failed to timely file the 2019 Renewal Application for renewal of license, in violation of section 73.3539(a) of the Rules. Licensee also admits that it failed to maintain an online public inspection file, specifically, that it did not upload any issues and programs lists, in violation of section 73.3526 of the Rules during the Station's prior license term.

12. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.[7] The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee's admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the timely filing of applications or otherwise.

13. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Five Hundred Dollars ($500), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[8]

14. **Payment**. Licensee will send electronic notification of payment to Alexander Sanjenis at Alexander.Sanjenis@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[9] or by wire transfer. 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:[10]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843, or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[11] For

[6] *See* 47 CFR § 1.93(b).

[7] *See* 47 U.S.C. § 503(b)(2)(E).

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

[9] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[10] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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

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

- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed $24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

16. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 16(c), shall apply to all radio stations owned by the Licensee. The Compliance Plan shall contain, at a minimum, the following elements:

(a) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Licensee may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:

i. thoroughly explain the requirements embodied in the Online Public Inspection File Rule;

ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also

include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and

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

(b) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Licensee shall provide training under the compliance training plan on at least an annual basis, and it shall periodically review and revise the compliance training program as necessary to ensure that it remains current, complete, and effective.

(c) **Compliance Report**. One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for each station listed in Appendix A. The compliance report shall contain a certification of the Licensee's compliance with the Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require the Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 17 below.

i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the operating procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.

ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules,[12] and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.

iv. The compliance report shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

17. **Reporting Noncompliance**. The Licensee shall report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which

[12] 47 CFR § 1.16.

such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis, Assistant Division Chief, at Alexander.Sanjenis@fcc.gov**.**

18. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 16(c), provided the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

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

20. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 13, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the 2019 Renewal Application.

21. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[13] relating to the matters addressed in this Consent Decree.

22. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

24. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

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

28. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

29. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.



_____
Albert Shuldiner
Chief, Audio Division

July 18, 2023
Date

_____
William B. Cox III, President
Durlyn Broadcasting, Co.

_____
Date

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

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Albert Shuldiner
Chief, Audio Division

Date

William B. Cox III. President
Durlyn Broadcasting, Co.

July 10, 2023
Date

Federal Communications Commission
Washington, D.C. 20554

June 22, 2023

In Reply Refer to:
1800B3-TSN

DA 23-541
Released: June 22, 2023

EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Yaquina Bay Communications, Inc.
c/o Nathaniel Hardy, Esq.
Law Offices of Nathaniel Hardy, PLLC
4438 36th Street South
Arlington, VA 22206
nathanielhardy@gmail.com

Re: **DKYTE(FM), Independence, Oregon**
Facility ID No. 9848
Application File No. 0000161122

Petition for Reconsideration
Application for Renewal of License

Dear Licensee:

In this letter, we deny the Petition for Reconsideration (Petition) filed by Yaquina Bay Communications, Inc. (YBC),[1] seeking reconsideration of our January 6, 2023, Letter Decision dismissing YBC's application to renew the license of station DKYTE(FM), Independence, Oregon (Station).[2]

Background. On January 23, 2014, YBC filed an application for a minor modification to the Station's license, seeking to change the Station's community of license from Newport, Oregon, to Independence, Oregon.[3] YBC also sought authorization to relocate its transmitter from its then-current site (the Newport Site) to a new site (the Bald Mountain Site) from which it would provide principal community coverage to Independence. The Media Bureau (Bureau) granted the application on April 10, 2014, and subsequently extended the expiration date for the construction permit to September 3, 2017.[4] YBC filed an application for license to cover the minor modification construction permit on September 11, 2017,[5] which the Bureau granted on February 21, 2018.

[1] Pleading File No. 0000210640.

[2] *David Miller, Yaquina Bay Communications, Inc.*, Letter Decision, Ref. No. 1800B3-TSN (MB Jan. 6, 2023) (*Letter Decision*).

[3] File No. BPH-20140123BBU.

[4] *See* http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/comment.pl?Application_id=1574946&File_number=BPH-20140123BBU.

[5] File No. BLH-20170911AAL.

On May 30, 2018, citing an inability to operate from the Bald Mountain Site "until generator is sent and returned from manufacturer for warranty replacement," and stating that the generator was the only power source at the Bald Mountain Site, YBC requested a technical Special Temporary Authorization (STA) to operate from a different site (the Otter Crest Mountain Site).[6] The Station had previously broadcast from the Otter Crest Mountain Site while still licensed at Newport, Oregon.[7] The Bureau granted STA until December 1, 2018. YBC did not seek an extension or additional technical STA, nor did it seek any further authorization until filing its Renewal Application on September 29, 2021.[8]

PACNW Broadcasting, LLC (PACNW), licensee of station KPPT-FM, Depoe Bay, Oregon, filed an October 4, 2021, informal objection to the Renewal Application (Informal Objection),[9] and Outlaw Music Association (OMA), licensee of co-channel low-power FM station KIEV-LP, Camas, Washington, filed a December 31, 2021, Petition to Deny the Renewal Application (OMA Petition to Deny).[10] PACNW and OMA provided evidence indicating that the Station was still broadcasting from the Otter Crest Mountain Site,[11] despite expiration of the STA to broadcast from that site. Additionally, both PACNW and OMA produced plots demonstrating that, from the Otter Crest Mountain Site, the Station could not provide the requisite 70 dBμ principal community signal over Independence, its community of license.[12] YBC did not file an opposition to either pleading.

Based on the record indicating that the Station may have been operating with unauthorized facilities for more than twelve consecutive months, the Bureau sent a Letter of Inquiry (LOI) to YBC on September 19, 2022.[13] In the LOI, the Bureau requested, *inter alia*, that the Licensee "provide a chronological description of KYTE's operational status for **all periods of either operation or silence** from December 1, 2018, to the present. This description must indicate the exact location (ASRN or geographic coordinates) of KYTE's transmitter and antenna for each relevant time period, including the effective radiated power and antenna height above ground level, and the start and stop dates for each period of operation or silence."[14]

YBC responded to the LOI on October 10, 2022.[15] In its LOI Response, YBC stated that it had moved the Station to the Bald Mountain Site, and was working with the State of Oregon to have permanent power provided to the site, where the State also had facilities.[16] According to YBC, due to budget constraints the State of Oregon did not provide power to the site, forcing YBC to purchase two

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[6] File No. BSTA-20180530AAS.

[7] File No. BLH-19921028KA (covering File No. BPH-19910424ID).

[8] Application File No. 0000161122 (filed Sept. 29, 2021) (Renewal Application).

[9] Pleading File No. 162733.

[10] Pleading File No. 178368.

[11] Informal Objection, Exhibit 1; OMA Petition to Deny, Attachments A and B.

[12] Informal Objection, Exhibit 4; OMA Petition to Deny Exhibit 1.

[13] Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to David Miller, Yaquina Bay Communications, Inc. (Sept. 19, 2022).

[14] *Id*. at 3 (boldface emphasis in original).

[15] E-mail from David Miller, Yaquina Bay Communications, Inc., to Thomas Nessinger, Senior Counsel, FCC Media Bureau, Audio Division (Oct. 10, 2022, 4:00 p.m. EDT) (LOI Response).

[16] *Id*. at 1.

generators with which to operate its transmitter.[17] However, YBC mistakenly purchased generators designed as backup and not primary generators, one of which failed and was returned to the manufacturer.[18] The manufacturer advised YBC that the generator was not designed for primary use, and further advised that it had failed due to the use of bad propane fuel.[19] YBC's efforts to resolve the situation with the generator manufacturer, the propane supplier, and its insurer were unsuccessful.[20] YBC further stated that "with the pandemic," it could not afford to purchase a new generator, and it further lost its lease to the Bald Mountain Site.[21]

As a result of losing the Bald Mountain Site, YBC confirmed that it filed for STA to return to the Otter Crest Mountain Site, but stated that it "failed to realize that [the STA] was for just a short period of time."[22] YBC claimed that due to the need to avoid interference to other stations it has been difficult to locate another site from which it could provide community coverage to Independence.[23] YBC stated that it has offered the Station for sale and had an interested buyer that would like to re-establish service from the Bald Mountain Site, and requested that we grant a short-term renewal to enable it to consummate the assignment of the Station license.[24] YBC did not provide the requested chronological description of KYTE's operational status for all periods of either operation or silence from December 1, 2018, to the date of the LOI.[25]

In the *Letter Decision*, we noted that section 312(g) of the Communications Act of 1934, as amended (Act), provides that if a broadcast station fails to transmit broadcast signals with its authorized facilities for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license to promote equity and fairness.[26] We held that the Station license expired pursuant to section 312(g) because YBC confirmed in its LOI Response that the Station was operating with unauthorized facilities at an unauthorized location for more than 12 months, from December 1, 2018, to February 1, 2022.[27] We rejected YBC's claim that it was not aware of the limited duration of its STA to operate from the Otter Crest Mountain site, because the STA bore on its face the expiration date, and because all STAs issued by

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[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*. Licensee also states that all interference issues with PACNW's station KPPT-FM have been rectified, as have interference issues with OMA's KIEV-LP. Licensee further states that KIEV-LP is not protected from the Station's operations at either site. *Id*.

[24] *Id*.

[25] *See supra* note 15.

[26] 47 U.S.C. § 312(g). *See also* 47 CFR § 73.1740(c).

[27] *See Kingdom of God, Inc*., Memorandum Opinion and Order, 32 FCC Rcd 3654 (2017), *aff'd, Kingdom of God, Inc. v. FCC,* No. 17-1132, 719 Fed. Appx. 19, 20 (Mem), (D.C. Cir. Apr. 10, 2018) ("it strains credulity to suggest that the reference to 'broadcast signals' in § 312(g) includes unauthorized and unlicensed transmissions."); *Eagle Broad. Group, Ltd.,* Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008) (*Eagle Broadcasting*), *aff'd sub nom. Eagle Broad. Group, Ltd. v. FCC,* 563 F.3d 543, 553 (D.C. Cir. 2009) (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid license expiration under section 312(g)).

the Bureau are, by definition, temporary, and an initial grant of STA does not exceed 180 days.[28] Finally, we held that section 312(g)'s provisions allowing the Commission to extend or reinstate a station license did not apply in this case, because YBC's difficulties in operating from the Bald Mountain Site did not justify its unauthorized operation, for over three years, from an unlicensed site from which it could not provide the requisite principal community coverage of its community of license.[29]

On February 10, 2023, YBC filed its Petition. PACNW filed a Response to the Petition on February 17, 2023 (Response).[30]

Discussion. As discussed below, we deny the Petition.[31] The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.[32] We find that YBC has not shown legal error in the *Letter Decision*, and the precedent it cites for a different result is distinguishable.

YBC argues that, rather than dismissing its application for renewal of the Station license, the Bureau should grant reconsideration "because of equity and fairness due to the Commission's treatment of other licensees and the once-in-a-lifetime poor economic conditions caused by the Covid 19 pandemic."[33] Specifically, YBC contends that the Bureau should have assessed a monetary forfeiture rather than canceling the Station license and then dismissing the Renewal Application.[34] It cites *Christian Broadcasting of Yakima*,[35] in which the Bureau assessed a forfeiture to the licensee of a low-power television (LPTV) station that neglected to file either a timely application for license to cover its construction permit or a request for STA extension, resulting in a four-year period of unauthorized operation.[36] YBC argues that, just as in *Christian Broadcasting*, it operated for many years without authorization, and further that both it and the licensee in *Christian Broadcasting* operated under "once-in-a-lifetime" hardships: the digital television transition in the latter case, and the COVID-19 pandemic in its case.[37]

YBC has not demonstrated legal error to justify reversing the *Letter Decision*. In fact, the Bureau's conclusion in the *Letter Decision* that YBC's license expired pursuant to section 312(g) is consistent with long-standing Commission precedent. Moreover, YBC has failed to demonstrate how the COVID-19 pandemic, which did not commence until more than a year and a half after YBC commenced

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[28] 47 CFR § 73.1635(a)(4). *See also Eagle Broadcasting*, 23 FCC Rcd at 601, para. 26 (broadcaster's claim that it was "merely confused" about the status of its permit did not provide a creditable basis for grant of an exception to section 312(g)).

[29] *Letter Decision* at 4.

[30] Pleading File No. 0000212211.

[31] It should be noted that, regardless of our findings on the merits of the Petition, we are unable to grant the Renewal Application, owing to YBC's "red light" status, meaning that YBC is delinquent in its debt to the Commission. *See* 47 CFR § 1.1910(b)(2).

[32] *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.,* Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

[33] Petition at 2.

[34] *Id*. at 4.

[35] *Christian Broad. of Yakima*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-760 (MB July 14, 2022) (*Christian Broadcasting*).

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

[37] Petition at 4.

unauthorized operations, would warrant the exercise of discretion under the "equity and fairness" provisions of section 312(g). As PACNW notes, the Station moved from the Bald Mountain Site to the Otter Crest Mountain Site in May of 2018, over a year and a half before the start of the pandemic in early 2020.[38] The Bureau's conclusion that the license had expired pursuant to section 312(g) is consistent with the recent decision in *International Aerospace Solutions, Inc.*,[39] in which the Commission upheld the dismissal of a renewal application for violation of section 312(g). The licensee in *International Aerospace*, like YBC, asked that the Commission reverse the Bureau's action by exercising its discretion under the equity and fairness exception to section 312(g).[40] However, the Commission found that the licensee's rule violation was due to its own actions and its unexcused ignorance of Commission rules.[41] Additionally, the Commission held that the licensee could not blame its non-compliant operation on the COVID-19 pandemic, as its violation of section 312(g) occurred well before the pandemic began.[42]

We disagree with YBC that *Christian Broadcasting* is relevant to this case. *Christian Broadcasting* involved the expiration of a construction permit pursuant to section 319 of the Act and that licensee's failure to file an application for a license to cover.[43] Unlike the present case, it did not involve any claim that the station in *Christian Broadcasting* had been silent or that its license was cancelled under section 312(g) of the Act. The Bureau's decision to impose a forfeiture in response to a station's failure to file an application for license to cover has no bearing on and cannot serve as precedent for the Bureau's treatment of stations that have been silent or engaged in unauthorized operation in violation of section 312(g). In this case, the Station was operating from a different location than its licensed site, without a valid STA. The Commission has consistently treated cases involving operation from an unauthorized location in excess of twelve months as subject to cancellation under section 312(g),[44] reaffirming this precedent in a recent decision.[45] Thus, *Christian Broadcasting* is inapposite to the facts of this case.

Moreover, we note YBC does not specify a plan to return the Station to operation from its licensed site, other than to state that reversal of the *Letter Decision* would "allow it to submit a license application for Station KYTE."[46] However, prior to release of the *Letter Decision* the Station was already licensed to operate at the Bald Mountain site.[47] The Station would have to return to that site to resume rule-compliant operation. It is thus unclear from YBC's Petition exactly what kind of application it intends to file—any license application for the Otter Crest Mountain Site or a new site would have to be preceded by an application for, and grant of, a construction permit for that site. YBC has already referred to the difficulty in finding a site from which to cover Independence, Oregon.[48] Further, as PACNW points out in its Response, YBC's options are limited given that changing the community of license from

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[38] Response at 3.

[39] *Int'l Aerospace Solutions, Inc.*, Memorandum Opinion and Order, FCC 23-8 (Feb. 14, 2023) (*International Aerospace*).

[40] *Id*. at 3, para. 6.

[41] *Id*. at 5, para. 11.

[42] *Id*.

[43] *Christian Broadcasting*, DA 22-760 at 2, para. 2. *See also* 47 U.S.C. § 319(c).

[44] *See Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd, Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009).

[45] *Absolute Broadcasting, LLC*, Memorandum Opinion and Order, FCC 23-38, at 9, para. 19 (rel. May 17, 2023).

[46] Petition at 4.

[47] *See supra* note 5.

[48] *See supra* note 23 and accompanying text.

Independence would be disfavored, as the Station is the sole local transmission service at that community.[49]

We further reject YBC's attempt to blame its predicament on the "once-in-a-lifetime poor economic conditions" caused by the COVID-19 pandemic.[50] In the present case YBC's difficulties ultimately stemmed from its business decisions in site selection and equipment purchases.[51] YBC cannot rely on its mistaken belief that the initial technical STA need not have been extended beyond the expiration date the STA bore.[52] Finally, YBC cannot blame its inability to replace faulty generators on financial problems caused by a pandemic that was 21 months in the future.[53] We find that the case before us more closely resembles *International Aerospace* than it does *Christian Broadcasting*, and warrants the same result.

Conclusion. We find that our action in the *Letter Decision* comports with recent Commission precedent, and on that basis the February 10, 2023, Petition for Reconsideration IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Richard J. Hayes, Jr., Esq. (fcclaw@rjhayes.com), Counsel to PACNW Broadcasting, LLC
David Stepanuyk (david@outlaw.fm), President, Outlaw Music Ass'n

[49] Response at 2-3. *See Rural Radio Second Report and Order*, 26 FCC Rcd at 2578 n.106 (citing *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14228-30 (2006), *recon. pending* (retaining presumption against removal of sole local transmission service, regardless of the size of the community)).

[50] Petition at 2.

[51] LOI Response at 1.

[52] *Id*. *See also International Aerospace* at 5, para. 11 and n.33.

[53] *International Aerospace* at 5, para. 11.

Federal Communications Commission
Washington, D.C. 20554

DA 23-542
In Reply Refer to:
1800B3-ALV
Released: **June 23, 2023**

Fort Myers Broadcasting Company
Jennifer A. Johnson, Esq.
Covington & Burling LLP
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850 Tenth Street NW
Washington, DC 20001
(sent by electronic mail to: jjohnson@cov.com)

Sumarrase, Inc.
c/o Mr. Dwayne Williams
3507 Lee Blvd., Suite 254
Lehigh Acres, FL 33971
(sent by electronic mail to: info@suga957.com)

In re: **W239CL, Golden Gate, FL**
Fort Myers Broadcasting Company
Facility ID No. 139116
File No. 0000120834

Application for License
Petition for Reconsideration/Interference
Complaint

Dear Counsel and Petitioner:

We have before us a Petition for Reconsideration (Petition), filed by Dwayne Williams d/b/a Sumarrase, Inc. (Sumarrase), licensee of WSGD-LP, Lehigh Acres, Florida, and responsive pleadings.[1] Sumarrase seeks reconsideration of the grant by the Audio Division, Media Bureau (Bureau) of the

[1] Petition for Reconsideration of Sumarrase, Pleading File No. 0000124025 (Oct, 6, 2020); Opposition to Petition for Reconsideration (Opposition), filed by Fort Myers Broadcasting Company (FMBC), Pleading File No. 0000124701 (Oct. 15, 2020); Sumarrase Reply to Opposition (Reply), Pleading File No. 0000125099 (Oct. 27, 2020); FMBC Motion for Leave to File, Pleading File No. 0000125498 (Nov. 4, 2020); FMBC Motion for Leave to Dismiss Reply to Opposition, Pleading File No. 0000125502 (Nov. 4, 2020); Sumarrase Opposition to Motion to Dismiss, Pleading File No. 0000125689 (Nov. 9, 2020); FMBC Reply to Opposition to Motion to Dismiss, Pleading File No. 0000125979 (Nov. 13, 2020); and Sumarrase "Final Reply to any FMBC to FCC Motions," Pleading File No. 0000126454 (Nov. 19, 2020). In addition, between February 5, 2021, and March 5, 2021, Sumarrase sent several emails to Bureau staff regarding further allegations against FMBC. Bureau staff subsequently notified Sumarrase that the emails, which were not served on the other party to this proceeding, were prohibited *ex parte* communications.

above-referenced covering license application (License Application)[2] for FM Translator Station W239CL, Golden Gate, Florida. For the reasons discussed below, we dismiss the Petition and uphold the grant of the License Application.

Background. On February 28, 2020, Fort Myers Broadcasting Company (FMBC), the licensee of FM Translator Station W239CL, filed an application for a minor modification to change the W239CL licensed transmitter site and modify its facilities.[3] The Bureau granted this uncontested application on March 13, 2020. On August 27, 2020, FMBC filed the subject license application to cover the modified W239CL permit.[4] The License Application was granted on September 25, 2020.[5]

On October 6, 2020, Sumarrase filed its Petition for Reconsideration of the grant of the W239CL license application, arguing that W239CL causes interference to Sumarrase's "previously authorized" co-channel LPFM station WSGD-LP, Lehigh Acres, Florida. To support its interference claim, Sumarrase submits (1) maps showing the specific locations of interference inside the 45 dBu contour; (2) a package of 13 listener complaints "covering 21 qualifying locations within the WSGD-LP 45 dBu contour"; and (3) a declaration from an engineer, Steven L. White, certifying that he "calculated the U/D ratios and prepared the maps in the exhibit."[6]

Sumarrase explains that it previously sent its listener complaints of interference to FMBC, and on September 23, 2020, FMBC responded by accusing Sumarrase of operating high power facilities and requested that Sumarrase provide a detailed engineering statement and open WSGD-LP for inspection by FMBC.[7] Sumarrase states that it subsequently reiterated to FMBC that "it is operating within its authorized parameters to make 22 ERP at 200 feet" and denied FMBC access to its transmitter site due to a pending motion "related to earlier unauthorized access by FMBC employees."[8] Sumarrase urges the Bureau to require FMBC to cease operation of its FM translator station until it can resolve the demonstrated interference. If FMBC cannot resolve the interference, Sumarrase requests that the Bureau reconsider and deny the W239CL license application.

In its Opposition, FMBC argues that the Petition is both procedurally and substantively deficient. Specifically, FMBC argues that the Petition is procedurally defective because it does not conform to the requirements of section 1.106 of the Commission's rules.[9] FMBC asserts that Sumarrase fails to explain why it waited until after the grant of the License Application to raise its interference allegations[10] and that the Petition is part of Sumarrase's "pattern of abusive reconsideration filings."[11] FMBC contends that the

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[2] *See* Application File No. 0000120834, granted September 25, 2020.

[3] *See* Application File No. 0000106772.

[4] *See Applications,* Public Notice, Report No. PN-1-200831-01 (August 31, 2020).

[5] *See Actions*, Public Notice, Report No. PN-2-200929-01 (September 29, 2020).

[6] *See* Petition at 2 and Exhibit 1.

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

[8] *Id.* at 2. *See also Sumarrase, Inc. v. Fort Meyers Broadcasting Co.*, Circuit Court of the Twentieth Judicial Circuit, Lee County, Florida, Case No. 202-CA-004070 (June 22, 2020). Sumarrase states that on September 25, 2020, its tower landlord notified it that FMBC was attempting to gain access to WSGD-LP. The case was dismissed without prejudice on November 30, 2020.

[9] *See* 47 CFR § 1.106.

[10] Objection at 1.

[11] *Id.* at 2. *See* Pleading File Nos. 0000106515 (February 24, 2020); 0000108726 and 0000108741 (March 23, 2020); 0000119563 (July 31, 2020); 0000120308 (August 11, 2020); 0000120661 (August 31, 2020); and

Petition is also substantively deficient because (1) the Petition violates section 74.1203(a)(3) of the rules;[12] (2) Sumarrase neither constructed nor operated authorized facilities for WSGD-LP;[13] and (3) grant of the W239CL license application did not increase interference to WSGD-LP.[14]

In its Reply, Sumarrase asserts that its Petition is timely because it is "plainly obvious that 'actual interference' cannot be identified until an interfering translator is on the air."[15] Sumarrase also states that WSGD-LP is the "earlier authorization for interference consideration"[16] and refutes FMBC's accusation that WSGD-LP was improperly constructed and operated.[17]

Discussion. We dismiss the Petition as procedurally defective. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.[18] If the petitioner is not a party to the proceeding, it must state with particularity the manner in which its interests are adversely affected and show good reason why it was not possible to participate in the earlier stages of the proceeding.[19]

0000124025 (October 6, 2020). These pleadings, seeking reconsideration of the grant of the W239CL renewal application due to alleged interference to WSGD-LP, were dismissed on December 10, 2020. *See* Letter from Albert Shuldiner, Chief, Audio Division to Sumarrase, Inc., Ref. 1800B3-SS (finding, *inter alia*, that Sumarrase lacks standing to request reconsideration, its lone declaration is not probative that W239CL will interfere with WSGD-LP, and Sumarrase's petitions were not accompanied by an affidavit or declaration from a qualified engineer, as required by section 1.106(e) of the rules, and other information that the Commission requires for a valid and actionable interference claim).

[12] 47 CFR § 74.1203(a)(3) (prohibiting an authorized FM translator station to continue to operate if it causes any actual interference to "the direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station"). FMBC states that W239CL was first authorized in 2007, more than 10 years before WSGD-LP applied for its initial license, and therefore Sumarrase's claim that WSGD-LP is a "previously authorized station" is untrue. *See* Opposition at 2.

[13] Opposition at 3-4. FMBC alleges that Sumarrase operates its station above its authorized power using an unauthorized antenna. *Id.*

[14] *Id.* at 4-5. *See also* Technical Exhibit to Opposition (explaining that the purpose of the exhibit is to "demonstrate that W239CL's currently licensed facilities are predicted to cause less interference to WSGD-LP than W239CL's previously licensed facilities (File No. BLFT-20170412AAL).").

[15] Reply at 2.

[16] *Id.* at 2.

[17] *Id.* at 3-5. On November 4, 2020, FMBC filed a "Motion to Dismiss Reply to Opposition," arguing that the Sumarrase Reply violates section 1.52 of the rules and must therefore be dismissed without further consideration. We disagree. Section 1.52 of the rules states that "[t]he original of all petitions, motions, pleadings, briefs and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address." *See* 47 CFR § 1.52. Sumarrase is not represented by counsel, but the Commission's database indicates that Dwayne Williams, the owner of Sumarrase, Inc., signed and verified the Reply and stated his address. Accordingly, Sumarrase did not violate section 1.52 of the rules, and we find no reason to dismiss or otherwise disregard the Sumarrase Reply.

[18] *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC,* 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

[19] *See* 47 CFR § 1.106(b)(1).

Although from early 2020, Sumarrase filed numerous complaints and petitions against FMBC, regarding the alleged interference W239CL causes to WSGD-LP,[20] Sumarrase failed to object to the W239CL modification application[21] or contest the License Application. During the six-month period from the February 2020, filing of the W239CL modification application to the subsequent, August 2020, submission of the License Application, Sumarrase could have presented information regarding the predicted interference, but neglected to do so.[22] We find that Sumarrase was not a party to the proceeding and has not justified its failure to participate earlier. Further, we note that the FMBC License Application is entitled, under section 319(c) of the Communications Act of 1934, as amended,[23] to a high degree of protection and a presumption that the public interest determination made during the underlying construction permit proceedings continues in effect unless extraordinary circumstances[24] have arisen that would make operation of the translator against the public interest.[25] Sumarrase has not demonstrated good cause to deviate from the stringent section 319(c) mandate.

Moreover, we note that even if we were to consider the Petition on its merits, we would deny it. To present an actionable claim of interference, a complainant must submit, *inter alia,* (1) the required minimum number of valid listeners complaints;[26] (2) a map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBμ contour; and (3) a statement that the complaining station is operating within its licensed parameters.[27] On the surface, Sumarrase appears to provide the requisite information for a valid translator interference claim package, including, a statement that it operates WSGD-LP within its licensed parameters. A station, *if* operating according to its licensed parameters, is entitled to protection from interference.

WSGD-LP is licensed to operate with a one-bay, Shively model 6812B-1, nondirectional antenna at a maximum ERP of 22 watts and TPO of 22 watts.[28] FMBC claims that Sumarrase "neither constructed nor operated FCC-authorized facilities for WSGD-LP,"[29] and it, *inter alia, "*utilized an antenna that differed from its authorized antenna" and "operated with transmitter power output (TPO)

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[20] *See*, *e.g.,* Pleading File Nos. 0000106515 (February 24, 2020); 0000108726 and 0000108741 (March 23, 2020); *see also supra* note 8.

[21] *See supra* note 3.

[22] *See Amendment of Part 74 of the Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (establishing technical criteria to assess predicted interference and procedures for filing predicted interference claims); 47 CFR § 74.1204(f).

[23] 47 U.S.C. § 319(c) (requiring the Commission to issue a license where a construction permit has been granted, and it appears that the terms of such permit have been met, and "that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest ...").

[24] *See, e.g., Whidbey Broadcasting Service, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8726, 8727 (1989).

[25] The Commission traditionally is reluctant to designate license applications for hearing, and in most cases, considers the grant of the license application to follow almost automatically from the issuance of the construction permit and completion of construction. *See, e.g., Meyer Broad. Co.*, Memorandum Opinion and Order, 65 FCC 2d 438, 441, para. 9 (1977).

[26] *See* 47 CFR § 74.1203(a)(3).

[27] *Id.*

[28] *See* File No. BLL-20180104AAH.

[29] Opposition at 3. FMBC alleges that the "technical portion of the WSGD-LP license application was a complete fiction." *Id.*

levels that exceeded the authorized TPO."[30] Although Sumarrase repeatedly refutes FMBC's claim and insists that "WSGD-LP was properly constructed and is properly operated,"[31] it conversely concedes that it did not install the one-bay antenna authorized in its license.[32] Specifically, Sumarrase explains that it:

> "initially filed for its construction permit specifying a single bay Shively 6812B antenna system. In an amendment that was denied, two bays were proposed … When it came time to order the antenna, a 2-bay antenna was ordered … Sumarrase's consulting engineer was not aware of the actual order and substitution, and the Shively 6812B-1 was inadvertently specified with its corresponding TPO on the forthcoming license application … Recently in an attempt to mitigate interference and upon learning that the information regarding the substitute antenna was not communicated properly in its license application, Sumarrase has attempted to conform as closely as possible to the single bay requested on the license application …"[33]

It is, therefore, undisputed that Sumarrase has operated WSGD-LP with an unauthorized two-bay antenna, instead of the single-bay antenna specified on the WSGD-LP license, and apparently violated section 73.845 of the Commission's rules.[34] The Commission must rely on licensees for the accuracy of the information provided in license applications and reflected in station licenses. Sumarrase's failure to specify the correct antenna in its license application has resulted in it operating at a variance from its licensed parameters and, potentially, to the alleged interference between WSGD-LP and W239CL.[35] Sumarrase's violation precludes us from acting on its interference complaint. The responsibility for correcting the antenna error and accepting the consequences lies with Sumarrase. In a separate action we are issuing a Notice of Apparent Liability for Forfeiture to Sumarrase for apparently violating section 73.845 of the Commission's rules by operating with an unauthorized antenna. We also mandate that Sumarrase either promptly return WSGD-LP to its licensed parameters or file an application for a minor modification of its station license to correct the violation[36] and reflect the manner in which it has been operating.[37]

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[30] *Id.* at Technical Exhibit, prepared by W. Jeffrey Reynolds, du Treil, Lundin & Rackley, Inc.

[31] Reply at 3.

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

[33] Reply at 4. Sumarrase argues that "importantly, WSGD-LP has always operated with 22W ERP from its authorized height. Only during the brief periods suspiciously corresponding to the unauthorized site access by FMBC … was WSGD-LP ever over power." *Id.* at 5.

[34] *See* 47 CFR §73.845 ("Each LPFM licensee is responsible for maintaining and operating its broadcast station in a manner that complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization…").

[35] We emphasize not only the importance of building and operating a station consistent with the terms of the authorization, but also the importance of reviewing and ensuring the accuracy of the information contained in the license application and subsequent authorization.

[36] *See, e.g., Zwerling Broadcasting System*, Forfeiture Order, DA 22-1238 (2022) (ordering station operating with non-conforming operations to either return to its licensed parameters or file to modify its station authorization).

[37] If WSGD-LP still receives interference from W239CL, after correcting the violation and operating within its approved and licensed parameters, it is not precluded from filing another interference complaint. Any such complaint must include all necessary requirements as specified in sections 74.1201(k) and 74.1203(a)(3) of the rules. 47 CFR §§ 74.1201(k) and 74.1203(a).

Conclusion/Actions. Accordingly, IT IS ORDERED that the Petition for Reconsideration, filed October 6, 2020, by Sumarrase, Inc., IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-543
Released: June 22, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES FILING DEADLINES FOR COMMENTS AND REPLY COMMENTS REGARDING WIRELESS EMERGENCY ALERT AND EMERGENCY ALERT SYSTEM RULES

PS Docket Nos. 15-94 and 15-91

Comments Due: July 21, 2023
Reply Comments Due: August 21, 2023

On April 21, 2023, the Federal Communications Commission adopted a *Further Notice of Proposed Rulemaking* (*FNPRM*), FCC 22-30.[1] The *FNPRM* seeks comment on proposed rules to make Wireless Emergency Alerts (WEA) more accessible to people who do not speak English or Spanish and to those with disabilities who cannot access messages displayed in conventional format.[2] The *FNPRM* proposes rules that would integrate WEA more seamlessly into people's lives through increased flexibility in whether the attention signal and/or vibration is triggered.[3] The *FNPRM* also proposes to require wireless providers that participate in WEA satisfy performance measures for WEA and provide alerting stakeholders with greater transparency regarding WEA's availability and performance.[4]

A summary of the *FNPRM* was published in the Federal Register on June 21, 2023, stating that comments on these proposed rules would be due 30 days after the date on which the Federal Register publication occurred, and that reply comments would be due 60 days after Federal Register publication.[5] Accordingly, by this *Public Notice*, the Public Safety and Homeland Security Bureau notifies interested parties that comments on the proposed rules are due on **July 21, 2023**, and reply comments are due on **August 21, 2023**.

Filing Procedures. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.[6] Comments and reply comments should refer to PS Docket Nos. 15-94 and 15-91.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the

[1] *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Concerning Emergency Alert System and*, PS Docket Nos. 15-91 and 13-94; Further Notice of Proposed Rulemaking, FCC 23-30 (April 21, 2023).

[2] *See id.* at paras. 11-20.

[3] *See id.* at paras. 29-30.

[4] *See id.* at paras. 37-64.

[5] *See* Federal Communications Commission, Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System, 88 Fed. Reg. 40606 (June 21, 2023).

[6] *See* Federal Communications Commission, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

ECFS: https://www.fcc.gov/ecfs/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[7]
- 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.

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

Ex Parte Rules. This proceeding shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[8] 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.

Additional Information. For additional information on this proceeding, contact James Wiley, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau,

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

[8] 47 CFR §§ 1.1200 *et seq.*

(202) 418–1678, or by email to James.Wiley@fcc.gov, or Michael Antonino, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7965, or by email to Michael.Antonino@fcc.gov.

PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 23-544
Released: June 22, 2023

REMINDER THAT ANNUAL SUMMARIES OF TRS COMPLAINTS ARE DUE JULY 3, 2023; CONTACT INFORMATION AND SUBSTANTIVE CHANGES IN TRS PROGRAMS MUST BE REPORTED

CG DOCKET NO. 03-123

The Federal Communications Commission's Consumer and Governmental Affairs Bureau reminds state telecommunications relay services (TRS) programs and TRS providers of (1) their annual obligation to submit summaries of their consumer complaint logs on or before Monday, July 3, 2023, and (2) their ongoing obligations to file and maintain TRS consumer contact information, and to notify the Commission of any substantive program change.

Annual Summary of Consumer Complaints

To assist the Commission in monitoring the service quality of TRS providers, the Commission requires state TRS programs and interstate and Internet-based TRS providers to collect and maintain a log of consumer complaints alleging violations of the federal TRS mandatory minimum standards.[1] State TRS programs and interstate TRS providers are required to log all complaints made to the state agency, as well as those made to the state's TRS provider. State programs and all TRS providers must file annually with the Commission a summary of the complaint log for the previous year.[2] These summaries are intended to provide an indication to the Commission of possible service quality issues. This information also allows the Commission to determine whether a state or a TRS provider has appropriately addressed consumer complaints, and to spot national trends that may lend themselves to coordinated solutions. Moreover, the information enables states to learn how other states are resolving complaints.[3]

Complaint log summaries shall cover all complaints received from June 1, 2022, through May 31, 2023, and shall include, at a minimum, the total number of interstate relay calls by type of TRS (i.e., traditional TRS, speech-to-speech (STS), captioned telephone service (CTS), Internet protocol (IP) CTS, IP relay service (IP Relay), and video relay service (VRS)); the number of complaints alleging a violation of the federal TRS mandatory minimum standards; and, for each such complaint, the date of the complaint, the nature of the complaint, the date of its resolution, and an explanation of the resolution.[4]

Consumer Contact Information

[1] *See* 47 CFR § 64.604(c)(1)(i); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5144-5145, para. 9 (2000) (*Improved TRS Order*).

[2] 47 CFR § 64.604(c)(1)(ii).

[3] *Improved TRS Order*, 15 FCC Rcd at 5190-5191, para. 122.

[4] *See* 47 CFR § 64.604(c)(1).

We also remind certified state TRS programs, interstate and Internet-based TRS providers, and TRS providers that have state contracts that they must maintain on file with the Commission the name of a contact person or office, or both, for the receipt of inquiries and complaints from consumers.[5] The information on file with the Commission must include, at a minimum, the name and address of the state or TRS office that receives complaints, grievances, inquiries and suggestions; the voice, TTY, and fax numbers, e-mail address, and web address for that office; and the physical address to which correspondence should be sent.[6]

The Commission must be notified each time there is a change in any of this required information. Any changes in contact information should be sent to TRS_POC@fcc.gov.

Contact information for certified state TRS programs is posted on the Consumer and Governmental Affairs Bureau's website at: https://www.fcc.gov/general/trs-state-and-territories; contact information for Internet-based TRS providers is posted at: https://www.fcc.gov/general/internet-based-trs-providers.

Notice of Substantive Change in a TRS Program

We also remind certified state TRS programs and providers of Internet-based TRS (VRS, IP Relay, and IP CTS) that they must notify the Commission of any substantive changes in their TRS programs within 60 days of when they occur, and must certify that they continue to meet federal mandatory minimum standards after implementing the substantive change.[7]

Filing Procedures

Complaint Log Summary filings and notices of substantive changes in TRS Programs must reference CG Docket No. 03-123. Submissions may be filed in one of two ways: (1) by using the Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies.

- Federal Commission Commission's Website: https://www.fcc.gov/ecfs/filings/standard. Follow the instructions for submitting comments.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the

[5] 47 CFR § 64.604(c)(2).

[6] *Id*.

[7] 47 CFR § 64.606(f)(1), (2).

Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.[8]

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

Access to Filings

Filings may be found by searching on the Commission's ECFS at: http://apps.fcc.gov/ecfs/ (insert **CG Docket No. 03-123** into the Proceeding block).

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

For further information, please contact Dana Warrick at: (202) 418-2247 (voice) or by email at: Dana.Warrick@fcc.gov.

-FCC-

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

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
SUMARRASE, INC.	)	NAL/Acct. No. MB-202341410011
	)	FRN: 0022411177
	)	Facility ID No. 194387
LPFM Station WSGD-LP, Lehigh Acres, Florida	)	
	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 23, 2023 **Released: June 23, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, we find Sumarrase, Inc. (Sumarrase), apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (Act),[1] and section 73.845 of the Commission's rules (rules)[2] by operating LPFM station WSGD-LP, Lehigh Acres, Florida (Station) at a variance from its authorized parameters. Based upon our review of the facts and circumstances before us, we conclude that Sumarrase is apparently liable for a monetary forfeiture in the amount of two thousand five hundred dollars ($2,500).

II. BACKGROUND

2. The Station was licensed in 2018 to operate with a one-bay, Shively model 6812B-1, nondirectional antenna at a maximum ERP of 22 watts and TPO of 22 watts.[3] Beginning in early 2020, Sumarrase filed numerous complaints and petitions against Fort Myers Broadcasting Company (FMBC), the licensee of FM translator station W239CL, Golden Gate, Florida, alleging that W239CL causes interference to WSGD-LP.[4] In response to the interference complaints, FMBC asserted that Sumarrase neither constructed nor operated authorized facilities for WSGD-LP.[5] Although Sumarrase initially

[1] 47 U.S.C. § 301.

[2] 47 CFR § 73.845.

[3] *See* File No. BLL-20180104AAH (granted January 31, 2018).

[4] *See, e.g.,* Pleading Nos. 0000106515 (February 24, 2020); 0000108726 and 0000108741 (March 23, 2020); 0000119563 (July 31, 2020); 0000120308 (August 11, 2020); 0000120661 (August 31, 2020); and 0000124025 (October 6, 2020). These pleadings, seeking reconsideration of the grant of the W239CL renewal application due to alleged interference to WSGD-LP, were dismissed on December 10, 2020. *See* Letter from Albert Shuldiner, Chief, Audio Division to Sumarrase, Inc., Ref. 1800B3-SS. *See also* Pleading No. 0000124025 (October 6, 2020). This pleading, seeking reconsideration of the grant of the W239CL covering license application due to the alleged interference, was dismissed on June 23, 2023. *See* Letter from Albert Shuldiner, Chief, Audio Division to Sumarrase, Inc., Ref. 1800B3-ALV.

[5] *See, e.g.,* Pleading No. 0000124701 (October 15, 2020) (contending that Sumarrase operates its station above its authorized power using an unauthorized antenna). FMBC also filed a petition for reconsideration of the grant of the WSGD-LP renewal application, arguing that WSGD-LP was neither constructed nor operated in the manner set out in its FCC authorizations. *See* File No. 0000081972 (granted January 15, 2020); Pleading No 0000105766

(continued….)

refuted FMBC's claims, it subsequently conceded that it did not install the one-bay antenna authorized in its license. Specifically, Sumarrase explained that it:

> "initially filed for its construction permit specifying a single bay Shively 6812B antenna system. In an amendment that was denied, two bays were proposed … When it came time to order the antenna, a 2-bay antenna was ordered … Sumarrase's consulting engineer was not aware of the actual order and substitution, and the Shively 6812B-1 was inadvertently specified with its corresponding TPO on the forthcoming license application … Recently in an attempt to mitigate interference and upon learning that the information regarding the substitute antenna was not communicated properly in its license application, Sumarrase has attempted to conform as closely as possible to the single bay requested on the license application …"[6]

III. DISCUSSION

3. *Non-Conforming Operations*. Section 73.845 of the rules requires each LPFM licensee to maintain and operate its broadcast station in accordance with the terms of its station authorization.[7] Further, 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."[8] Sumarrase has admitted that, despite being licensed to operate with a one-bay nondirectional antenna, the Station has been operating with a 2-bay antenna. It appears that the Station has operated in this manner for the entirety of its license term, and continues to do so.

4. Sumarrase explains that it mistakenly submitted its license application with the incorrect antenna and that it has "attempted to conform as closely as possible to the single bay requested on the license application.."[9] This does not, however, nullify or excuse the violation. Each licensee is responsible for reviewing and ensuring the accuracy of the information contained in its application and authorization, and for operating in conformity with its license authorization.

5. Accordingly, we find that Sumarrase apparently willfully and repeatedly violated section 73.845 of the rules by operating the Station with an unauthorized antenna. Further, as a result of operating with the unauthorized antenna, Sumarrase also engaged in unauthorized operation in violation of section 301 of the Act for over five years.[10] Below, we propose a forfeiture totaling two thousand five hundred dollars ($2,500) for this apparent violation.

6. *Proposed Forfeiture.* This NAL is issued pursuant to section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[11] Section 312(f)(1) of the Act defines willful as "the conscious and

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(February 11, 2020). The FMBC petition for reconsideration was dismissed as procedurally defective. *See* Letter from Albert Shuldiner, Chief, Audio Division to Fort Myers Broadcasting Company, Ref. 1800B3-DB (December 10, 2020).

[6] Pleading No. 0000125099 (October 27, 2020) at 4 (Sumarrase Pleading). Sumarrase explains that "importantly, WSGD-LP has always operated with 22W ERP from its authorized height." *Id.* at 5.

[7] 47 CFR §73.845 ("Each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization."); *see also* 47 CFR §73.1745(a) (prohibiting the operation of a broadcast station at variance from the terms of its authorization).

[8] 47 U.S.C. § 301.

[9] Sumarrase Pleading at 4.

[10] 47 U.S.C. § 301.

[11] 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[12] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[13] and the Commission has so interpreted the term in the section 503(b) context.[14] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[15]

7. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the rules establish a base forfeiture amount of $5,000 for the use of unauthorized equipment.[16] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[17]

8. As noted above, the Station has apparently operated with an unauthorized antenna from January 31, 2018, until the present. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture for this apparent violation of section 73.845 of the rules from the base amount to $2,500 because, as an LPFM station, the Station is providing a secondary service.[18]

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, that 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, that Sumarrase, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of two thousand five hundred dollars ($2,500) for its apparent willful and repeated violations of section 301 of the Communications Act of 1934, as amended, and section 73.845 of the Commission's rules.

10. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that, within thirty (30) days of the release date of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, Sumarrase, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system), or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are

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[12] 47 U.S.C. § 312(f)(1).

[13] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[14] *See Southern California Broad. Co*., Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

[15] 47 U.S.C. § 312(f)(2).

[16] *The Commission's Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), Table 1.

[17] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(10).

[18] *See, e.g., Corning Christian Radio Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1084 (MB Oct. 12, 2022); *Virginia Center for Public Press,* Memorandum Opinion and Order and Notice fo Apparent Liability for Forfeiture, 34 FCC Rcd 9312 (MB 2019) (each reducing forfeiture for untimely filed renewal application for LPFM station due to secondary service status); *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 18042 (MB 2021) (reducing base forfeiture amount as station provided a secondary service).

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.

12. 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.

13. 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. 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 Amy.Vandekerckhove@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.

14. **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 Sumarrase, Inc., 3507 Lee Blvd., Suite 254, Lehigh Acres, Florida 33971.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

PUBLIC NOTICE

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

News media information 202-418-0500
Internet: http://www.fcc.gov (or ftp.fcc.gov)
TTY (202) 418-2555

DA No. 23-546

Report No. SAT-01736 **Friday June 23, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-AMD-20230421-00093 E S2179 EchoStar Satellite Services L.L.C.
Amendment
Withdrawn Effective Date: 06/20/2023

Nature of Service: Fixed Satellite Service

SAT-STA-20230508-00107 E S2422 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/20/2023

On June 20, 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 to maintain the Galaxy 12 space station at the 137.1° W.L. orbital location and to provide fixed-satellite service (FSS) from that location. Galaxy 12 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 using the following center frequencies: 4198.0 MHz and 4199.875 MHz (space-to-Earth), and 6424.5 MHz (Earth-to-space).

SAT-STA-20230608-00134 E S2422 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/20/2023

On June 20, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority for a period of up to 10 days to continue to conduct telemetry, tracking, and command (TT&C) communications with Galaxy 12 during the space station's drift from the 129.0° W.L. orbital location to the 137.1° W.L. orbital location. Galaxy 12 operates TT&C using the following center frequencies: 4198.0 MHz and 4199.875 MHz (space-to-Earth), and 6424.5 MHz (Earth-to-space).

SAT-STA-20230612-00137 E S3032 BlackSky Global LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/22/2023

On June 22, 2023, the Satellite Programs and Policy Division granted, 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 in the earth exploration-satellite service and to conduct telemetry, tracking, and command with the Global 7 and Global 8 satellites at altitudes between 340 km and 385 km.

INFORMATIVE

SAT-LOA-20220325-00035 S3139 Orbital Sidekick, Inc.

The Satellite Programs and Policy Division has determined that Orbital Sidekick, Inc. has met the launch and begin operations milestone associated with its grant of authority to construct, deploy, and operate a constellation of up to six non-geostationary orbit space stations, GHOSt-01 through GHOSt-06 (Call Sign S3139), and may release the bond associated with this authorization. See 47 CFR §§ 25.164(b)(1) and (f) and 25.165(d).

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 23-547
Released: June 23, 2023

WIRELESS TELECOMMUNICATIONS BUREAU APPROVES FIVE CONTRABAND INTERDICTION SYSTEM CERTIFICATION APPLICATIONS UNDER PHASE ONE OF THE AUTHORIZATION PROCESS

GN Docket No. 13-111

I. INTRODUCTION

1. With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) approves five Contraband Interdiction System (CIS) certification applications filed, respectively, by: CellBlox Acquisitions, LLC;[1] ShawnTech Communications, Inc.;[2] Tecore Networks;[3] SOC, LLC;[4] and OmniProphis Corporation[5] (collectively, the Five CIS Applications), subject to the conditions described below. Each of the Five CIS Applications was filed under phase one of the Commission's two-phase process for certifying CIS for use in the submission of qualifying requests to disable contraband wireless devices in correctional facilities.

2. Approval of the Five CIS Applications allows each referenced CIS operator to market and sell its CIS as described in its respective application and supplement, and begin phase two testing. The referenced CIS operators may begin using their CISs in conjunction with any Designated

[1] Application of CellBlox Acquisitions, LLC for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Aug. 9, 2022) (CellBlox CIS Application); Supplement to Application of CellBlox Acquisitions, LLC for Certification of Contraband Interdiction System under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Oct. 31, 2022) (CellBlox CIS Supplement).

[2] ShawnTech Communications, Inc., CIS Certification Application, GN Docket No. 13-111 (filed Aug. 16, 2022) (ShawnTech CIS Application); ShawnTech Communications, Inc., CIS Certification Application Response, GN Docket No. 13-111 (filed Oct. 26, 2022) (ShawnTech CIS Supplement).

[3] Application of Tecore Networks for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Aug. 22, 2022) (Tecore CIS Application); Letter from Carli Rae Bernal, Vice President, Tecore Networks, to Roger Noel, Mobility Division Chief, FCC, GN Docket No. 13-111 (filed Nov. 7, 2022) (Tecore CIS Supplement).

[4] Application of SOC, LLC for Certification of Contraband Interdiction System Under 47 CFR 20.23, GN Docket No. 13-111 (filed Nov. 3, 2022) (SOC CIS Application); Letter from Travis Berrier, Senior Director, SOC, LLC, to Roger Noel, Mobility Division Chief, FCC, GN Docket No. 13-111 (filed Jan. 23, 2023) (SOC CIS Supplement); Letter from Marjorie K. Conner, Counsel to SOC, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-111 (filed Jan. 23, 2023) (*SOC ex parte*).

[5] Application of OmniProphis Corporation for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Nov. 30, 2022) (OmniProphis CIS Application); Letter from Joseph S. Noonan, CEO, OmniProphis Corporation, to Roger Noel, Mobility Division Chief, FCC, GN Docket No. 13-111 (filed Jan. 24, 2023) (OmniProphis CIS Supplement).

Correctional Facility Official's (DCFO's)[6] submission of qualifying requests for contraband wireless device disabling only after successful completion of the phase two testing and self-certification process.

II. BACKGROUND

3. In the *Second Report and Order*, the Commission adopted a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria.[7] The process of certifying CIS for this purpose consists of two phases: (1) CIS applicants submit certification applications to the Bureau describing the legal and technical qualifications of the systems; and (2) CIS applicants perform on-site testing of certified CISs at individual correctional facilities and file self-certifications with the Bureau confirming that the testing at a specific correctional facility was completed successfully.[8] Following WTB review and approval of the phase one CIS certification applications that meet applicable requirements, stakeholders using certified CISs may begin phase two on-site testing at individual correctional facilities. After both phases are complete, and the period for filing objections has lapsed,[9] DCFOs are authorized to submit qualifying requests to wireless providers to disable contraband devices located at a CIS approved/tested correctional facility.

4. The Bureau began accepting CIS certification applications on May 3, 2022,[10] and received the Five CIS Applications.[11] Each applicant filed a supplement to its Certification Application during the period from October 2022 to January 2023. On March 24, 2023, the Bureau issued a Public Notice announcing that each of the Five CIS Applications had been found complete and inviting stakeholders to review and file comments on the applications.[12] CTIA and T-Mobile filed generally supportive comments for CIS certification and did not oppose the approval of the Five CIS Applications.[13]

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[6] *See* 47 CFR § 20.3 (defining a Designated Correctional Facility Official); *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Second Report and Order and Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 11813, 11818-21, paras. 12-20 (2021) (*Second Report and Order*); *see also Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Erratum (rel. Aug. 3, 2021).

[7] *See Second Report and Order*, 36 FCC Rcd at 11814, para. 2.

[8] *See Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38.

[9] *See* 47 CFR § 20.3(c) (absent objections from a wireless provider . . . the DCFO may submit a qualifying request to a wireless provider beginning on the sixth business day after the later of the self-certification filing or actual service . . .).

[10] *Wireless Telecommunications Bureau Begins Accepting Contraband Interdiction System Certification Applications and Designated Correctional Facility Official Requests*, GN Docket No. 13-111, Public Notice, DA 22-475 (WTB 2022).

[11] CellBlox CIS Application; ShawnTech CIS Application; Tecore CIS Application; SOC CIS Application; OmniProphis CIS Application.

[12] *Wireless Telecommunications Bureau Seeks Comment on Five Contraband Interdiction System Certification Applications*, GN Docket No. 13-111, Public Notice, DA 23-224 (WTB 2023). The Bureau issued a Protective Order specifying procedures for Stakeholders seeking to review the confidential filings. *See Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Protective Order, DA 23-223 (WTB 2023).

[13] Comments of CTIA on Five Contraband Interdiction System Certification Applications, GN Docket No. 13-111, File Nos. 0001, 0002, 0003, 0004, 0005 (rec. Apr. 24, 2023) (CTIA Comments); Comments of T-Mobile USA, Inc., GN Docket No. 13-111, File Nos. 0001, 0002, 0003, 0004, 0005 (rec. Apr. 24, 2023) (T-Mobile Comments). CTIA notes that "mobile MAS deployments as a group raise . . . questions about accuracy" and the Commission should be cognizant of this "going forward as new applications are filed." CTIA Comments at 3-4. T-Mobile reviewed the applications and states that it "supports the Commission's certification of a range of CIS operations designed to meet different needs, including both fixed and mobile CIS." T-Mobile Comments at 2.

III. APPROVAL OF PHASE ONE CIS APPLICATIONS

5. After careful review of each application and the record, we find that the CIS applications filed by CellBlox, ShawnTech, Tecore, SOC, and OmniProphis, respectively, satisfy the eligibility criteria and application requirements, as specified in section 20.23 of the Commission's rules, the *Second Report and Order*, and the *Guidance Public Notice*.[14] As directed by the Commission in the *Second Report and Order*, the Bureau issued the *Guidance Public Notice* to provide guidance on the information required for inclusion in a CIS certification application and on the procedures for the submission of an application.[15] Specifically, phase one of the CIS certification application process requires an applicant to describe the legal and technical qualifications of, and provide a test plan for, the system that the applicant seeks to use as the basis for qualifying requests for contraband device disabling.[16] We briefly discuss each of the phase one application requirements in turn below.

6. *CIS Certification Application Description*.[17] We find that the Five CIS Applications sufficiently described the legal and technical qualifications of its CIS. Further, in accordance with Commission rules, the Five CIS Applications demonstrated that:

(1) *Equipment Authorization*: all radio transmitters used as part of the CIS have appropriate equipment authorizations pursuant to Commission rules, by providing a certification to that effect;[18]

(2) *CIS Design/Methodology*: the CIS is designed and will be configured to locate devices solely within a correctional facility, and that the methodology to be used in analyzing data collected by the CIS is adequately robust to ensure that a particular wireless device is in fact located within a correctional facility. In this regard, each CIS applicant also provided:

- a description of the scope and overall function of the system;
- a description of the system architecture and configuration with diagrams;
- a description of the hardware and its functions;
- a description of the software and its functions;
- a description of the steps required and preparations needed to implement the CIS at any correctional facility (e.g., site surveys, engineering design, installation, and optimization);
- a description of how the CIS, if so required, interacts with a wireless provider network;
- a description of data analysis techniques; and
- a description of the key performance factors that indicate successful operation,

[14] *See* 47 CFR § 20.23; *Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38; *Wireless Telecommunications Bureau Provides Guidance for Filing Contraband Interdiction System Certification Applications and Self-Certifications*, GN Docket No. 13-111, DA 21-1572, 2-3, paras. 6-8 (WTB 2021) (*Guidance Public Notice*).

[15] *Guidance Public Notice* at 2-4, paras. 5-6, 9-10.

[16] *Guidance Public Notice* at 2-4, paras. 5-10.

[17] *See* 47 CFR § 20.23(b)(1)(i)-(vi) (application requirements); *Second Report and Order*, 36 FCC Rcd at 11821, para. 23; *Guidance Public Notice* at 2-3, para. 6.

[18] CellBlox CIS Application at 5; ShawnTech CIS Application at 1; Tecore CIS Application at 18; Tecore CIS Application, Exhs. A-B; SOC CIS Application at 3; OmniProphis CIS Application at 11.

including the expected level of percentage accuracy in the rate of detection of contraband devices vs. non-contraband devices using a relevant sample size (*e.g.*, number of devices to be observed and the length of observation period) and the rationale for the expectation;[19]

(3) *Data Security*: the CIS will secure and protect all data collected and/or information produced as part of its intended use, including a description of the types of data the CIS collects, whether the data is retained and for how long, and how the data is stored and protected;[20]

(4) *911 Calls*: the CIS will not interfere with emergency 911 calls, including a description of the methodology used for allowing emergency 911 calls to be permitted;[21] and

(5) *Spectrum/Network Access Agreement*: the applicant is aware that a CIS may require a spectrum or network access agreement (*e.g.*, a spectrum leasing arrangement or roaming agreement) to be authorized to operate by stating and describing whether the CIS requires such an agreement to operate.[22]

7. *CIS Certification Application Test Plan.* We also find that the Five CIS Applications included a test plan that can be adapted to the circumstances of each planned deployment at a specific correctional facility, and adequately demonstrated that each CIS's overall methodology for system design and data analysis ensures, to the greatest extent possible, that only devices that are in fact contraband will be identified for disabling.[23] Specifically, each CIS applicant included:

(1) A proposed evaluation of the functions that the CIS will perform;[24]

(2) A description of the testing device(s) placement and the number of testing devices

[19] CellBlox CIS Application at 5-16; CellBlox CIS Supplement at 2-11; ShawnTech CIS Application at 2-10; ShawnTech CIS Supplement at 1-7; Tecore CIS Application at 18-29; Tecore CIS Supplement at 1-5; SOC CIS Application at 3-14; SOC CIS Supplement at 1-7; *SOC ex parte* at 3-9, 12-14; OmniProphis CIS Application at 11-16; OmniProphis CIS Supplement at 2-5. Each CIS applicant provided information regarding its CIS design and methodology for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[20] CellBlox CIS Application at 16-18; ShawnTech CIS Application at 10; Tecore CIS Application at 29-31; SOC CIS Application at 14-16; OmniProphis CIS Application at 16-18. Each CIS applicant provided information regarding its CIS data security methods for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[21] CellBlox CIS Application at 18; CellBlox CIS Supplement at 11-13; ShawnTech CIS Application at 10-11; Tecore CIS Application at 31-33; SOC CIS Application at 16; OmniProphis CIS Application at 19, 22; OmniProphis CIS Supplement at 4-5. Each CIS applicant provided information regarding its routing of 911 calls for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[22] CellBlox CIS Application at 18-19; ShawnTech CIS Application at 11; Tecore CIS Application at 34; SOC CIS Application at 16; OmniProphis CIS Application at 18; *see also* T-Mobile Comments at 2 (stating "it has entered into agreements with most of [the CIS applicants] to facilitate their access to spectrum licensed to T-Mobile, or its affiliates, in order to operate CIS within correctional facilities"). Tecore and OmniProphis each provided information regarding its spectrum/network access agreements for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[23] *See* 47 CFR § 20.23(b)(1)(vii) (application requirements); *Second Report and Order*, 36 FCC Rcd at 11822-23, paras. 26-27; *Guidance Public Notice* at 2-3, paras. 7-8.

[24] CellBlox CIS Application at 19-22; CellBlox CIS Supplement at 14-19; ShawnTech CIS Application at 11-12; ShawnTech CIS Supplement at 7-8; Tecore CIS Application at 35-37; SOC CIS Application at 17-22; *SOC ex parte* at 12-14; OmniProphis CIS Application at 18-19; OmniProphis CIS Supplement at 5-7. Each CIS applicant provided information regarding its CIS proposed functions for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

that will be used at the correctional facility(ies);[25]

(3) A demonstration of how the placement and number of testing devices are sufficient to evaluate the CIS as the applicant intends to market and operate the system;[26]

(4) A demonstration that the testing will be randomized, and an explanation of why the number of devices and trials are statistically significant;[27]

(5) A description of the data to be collected, including the number of devices correctly and incorrectly identified and/or intercepted as contraband, and the number of emergency 911 calls made and impacted;[28] and

(6) the precise method to be used for calculating the accuracy of the CIS and verifying that emergency 911 calls are unaffected.[29]

IV. CONCLUSION

8. Based on our review, we approve, subject to the conditions below, the Five CIS Applications in the public interest. Through the issuance of this Public Notice, CellBlox, ShawnTech, Tecore, SOC, and OmniProphis may market and sell their certified CISs as described in the respective Applications for ultimate use, following phase two testing, in obtaining information for the submission of qualifying requests for the disabling of contraband wireless devices.[30] The referenced entities may begin the phase two on-site testing of their CISs at individual correctional facilities as outlined in the *Second Report and Order* and more specifically in section 20.23 of the Commission's rules.[31] We remind all CIS operators receiving approval of their CIS Applications that they must file a self-certification following

[25] CellBlox CIS Application at 22-25; CellBlox CIS Supplement at 14-19; ShawnTech CIS Application at 11-12; ShawnTech CIS Supplement at 7-8; Tecore CIS Application at 37-38; SOC CIS Application at 16-19; SOC CIS Supplement at 7-8; OmniProphis CIS Application at 19. Each CIS applicant provided information regarding its CIS testing placement and number of testing devices for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[26] CellBlox CIS Application at 25; CellBlox CIS Supplement at 7, 14-19; ShawnTech CIS Application at 12-13; ShawnTech CIS Supplement at 7-8; Tecore CIS Application at 37-38; Tecore CIS Supplement at 5-6; SOC CIS Application at 20-21; SOC CIS Supplement at 7-8; OmniProphis CIS Application at 19. Each CIS applicant provided information regarding how the placement and number of testing devices are sufficient to evaluate the CIS for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[27] CellBlox CIS Application at 26; CellBlox CIS Supplement at 14-19; ShawnTech CIS Application at 13-14; ShawnTech CIS Supplement at 7-8; Tecore CIS Application at 38-39; SOC CIS Application at 20-21; SOC CIS Supplement at 7-8; OmniProphis CIS Application at 19-20. Each CIS applicant provided information regarding its data validation methodology for which it sought, in part, confidential treatment pursuant to Commission rule 0.459, 47 CFR § 0.459.

[28] CellBlox CIS Application at 26; CellBlox CIS Supplement at 14-19; ShawnTech CIS Application at 14; ShawnTech CIS Supplement at 7-9; Tecore CIS Application at 40; SOC CIS Application at 22-23; SOC CIS Supplement at 8-10; OmniProphis CIS Application at 20; OmniProphis CIS Application at 5-7. Each CIS applicant provided information regarding the description of the data to be collected by its CIS for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[29] CellBlox CIS Application at 26; CellBlox CIS Supplement at 14-19; ShawnTech CIS Application at 14-15; ShawnTech CIS Supplement at 7-9; Tecore CIS Application at 40-43; SOC CIS Application at 22; SOC CIS Supplement at 8-10; OmniProphis CIS Application at 20-21; OmniProphis CIS Application at 5. Each CIS applicant provided information regarding its method for calculating CIS accuracy for which it sought, in part, confidential treatment pursuant to Commission rule 0.459, 47 CFR § 0.459.

[30] *See* 47 CFR § 20.23(b)(2) (marketing and sales); *Second Report and Order*, 36 FCC Rcd at 11822, para. 25.

[31] *See* 47 CFR § 20.23(b)(3) (site-based testing and self-certification requirements); *see also Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38; *Guidance Public Notice* at 4-6, paras. 12-19.

completion of successful CIS testing.[32] The self-certifications must be filed using the Commission's Electronic Comment Filing System (ECFS) and must reference **GN Docket No. 13-111**.[33]

9. *Conditions.* This CIS certification application approval and each CIS operator's use of its certified CIS for the ultimate submission of qualifying requests is conditioned on the following:

1) Testing of the certified CIS and its subsequent operation and use to support qualifying requests must be as specifically described in that CIS operator's application and supplement as approved through this Public Notice;
2) A phase two testing self-certification, and a subsequently filed qualifying request, must be based upon information received from a certified CIS in deployed areas of an individual correctional facility where the CIS has been fully tested in real-time, live conditions consistent with the approved test plan;
3) The certified CIS must remain highly accurate regarding its:
   a) capability to identify only those devices physically located within the perimeter of operation; and
   b) ability to distinguish between contraband and non-contraband devices;
4) Approved CIS may be marketed and sold only to correctional facilities or entities that will provide contraband interdiction services to such facilities.

10. *Contact Information.* Questions regarding this *Public Notice* may be directed to Halie Peacher, Attorney Advisor, Wireless Telecommunications Bureau, Mobility Division at (202) 418-0514 or Halie.Peacher@fcc.gov.

-FCC-

[32] *See* 47 CFR § 20.23(b)(3) (site-based testing and self-certification requirements); *see also Guidance Public Notice* at 5, para. 14.

[33] *See Guidance Public Notice* at 5, para. 15; *see also Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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 23-548
Released: June 26, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON MATRIXSPACE, INC. REQUEST FOR WAIVER TO PERMIT DEPLOYMENT OF RADAR TRANMITTERS IN THE 24.45-24.65 GHZ BAND

WT Docket No. 23-216

Comments Due: July 26, 2023
Reply Comments Due: August 10, 2023

By this Public Notice, we seek comments on a request for limited waiver of Section 2 and Part 87 of the Federal Communications Commission's (FCC) rules filed by MatrixSpace, Inc. (MatrixSpace) to permit the use of its ground-based radar transmitter, the DopplerSpace MS01100 Radar (Radar) in the 24.45-24.65 GHz band for use in mobile and deployable systems.[1]

The 24.45-24.65 GHz band is allocated to the radionavigation and inter-satellite services on a primary basis for Federal and non-Federal use,[2] and part 87 of the Commission's rules authorizes airborne and ground-based use of the band for aeronautical radionavigation, including obstruction warning.[3] MatrixSpace suggests the use of its Radar in security systems, target tracking systems and unmanned aircraft systems (UAS) or other drones, that may be used for either radionavigation or radiolocation.[4] MatrixSpace claims an increasing use of UAS and need for spectrum based security systems among support for this request.[5]

MatrixSpace requests to use this band for a radiolocation purpose and therefore requests a waiver of section 2.106 and Part 87 of the Commission's rules to permit the use of its Radar.

We seek comment on this request.

Procedural Matters

To develop a complete record on the issues presented by this request, the proceeding will be treated, for ex parte purposes, as a "permit-but-disclose" proceeding in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b). MatrixSpace filed its petition electronically as a non-docketed proceeding in the Commission's Electronic Comment Filing System. We have opened a new docket**, WT Docket 23-216**, to facilitate consideration of this request

[1] *See* Request by MatrixSpace, Inc. for Waiver of Section 2.106 and for Sections 87.471and 87.475 of the Commission's Rules (filed Jan. 17, 2023) (Request).

[2] *See* 47 CFR § 2.106.

[3] *See* 47 CFR §§ 87.5, 87.173(b), 87.187(x), 87.475(b)(14).

[4] Request at 1.

[5] Request at 4.

and have moved MatrixSpace's petition into this docket. Parties should file all comments and reply comments in **WT Docket 23-216**.

***

Filing Requirements. Parties may file comments, identified by **WT Docket No. 23-216**, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S.-Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[6]

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

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

-FCC-

[6] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (Mar. 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

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

In the Matter of	)	
	)	File No.: EB-IHD-22-00034120
United Wireless Holdings, Inc.	)	NAL/Acct. No.: 202332080031
	)	FRN: 0016583965
Holding Various Licenses in the Wireless Radio Services	)	

ORDER

Adopted: June 30, 2023 **Released: June 30, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether United Wireless Holdings, Inc. violated the Commission's rules pertaining to reporting and obtaining approval for foreign ownership (alien ownership restrictions) and reporting *pro forma* transfers of control. To settle this matter, United Wireless agrees to implement a Compliance Plan and pay a $15,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding United Wireless' compliance with the Commission's foreign ownership limits in sections 310(b)(4) and (d) of the Communications Act of 1934, as amended (Act),[1] and sections 1.948(d) and 1.5001(i) of the Commission's rules.[2]

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of United Wireless' basic qualifications to hold or obtain any Commission license or authorization.[3]

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act, 47 U.S.C. § 154 (i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

[1] 47 U.S.C. § 310(b)(4), (d).

[2] 47 CFR §§ 1.948(d), 1.5001(i).

[3] *See* 47 CFR § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by email to Elizabeth Sachs, Esq., Lukas, LaFuria, Lantor & Sachs, LLP, 8350 Broad St., Suite 1450 Tysons, VA 22102 at lsachs@fcclaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
United Wireless Holdings, Inc.	)	File No.: EB-IHD-22-00034120
	)	CD Acct. No.: 202332080031
Holding Various Licenses in the Wireless Radio Services	)	FRN: 0016583965
	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and United Wireless Holdings, Inc. (United Wireless), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether United Wireless Holdings, Inc. violated sections 310(b)(4) and (d) of the Communications Act of 1934, as amended (Act),[1] and sections 1.948(d) and 1.5001(i) of the Commission's rules.[2] These violations pertain to reporting and obtaining approval for foreign ownership (alien ownership restrictions) and reporting *pro forma* transfers of control. To settle this matter, United Wireless agrees to implement a Compliance Plan and pay a $15,000 civil penalty (Civil Penalty).

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended.[3]

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

(c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

(d) "CD Acct. No." means account number 202332080031, associated with payment obligations described in paragraph 24 of this Consent Decree.

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

(f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which United Wireless is subject by virtue of its business activities, including but not limited to sections 310(b)(4) and (d) of the Act and sections 1.948 1.5001(h) of the Commission's rules.

(g) "Company" and "United Wireless" means United Wireless Holdings, Inc., and includes its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

[1] 47 U.S.C. § 310(b)(4), (d).

[2] 47 CFR §§ 1.948(d), 1.5001(i).

[3] 47 U.S.C. § 151 *et seq.*

(h) "Compliance Officer" means the individual designated at paragraph 17 of this Consent Decree as the person responsible for administration of the Compliance Plan.

(i) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 18. The Plan provides for obligations to continue for three years from the effective date. All obligations thereunder are waived for any period in those years during which United Wireless Holding, Inc. does not hold FCC authorizations.

(j) "Covered Employees" means all employees and agents of United Wireless who perform, supervise, oversee, or manage the performance of, duties that relate to United Wireless' responsibilities under the Commission rules relating to reporting/seeking approval for foreign ownership and transfer of controls.

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

(l) "Investigation" means the investigation commenced by the Bureau in EB-IHD-22-00034120 regarding whether United Wireless violated the rules relating to reporting/seeking approval for foreign ownership and transfers of control.

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

(n) "Parties" means United Wireless and the Bureau, each of which is a "Party."

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

II. BACKGROUND

3. *Legal Background*. Section 310(b)(4) of the Act establishes a 25 percent limit on ownership by foreign individuals, corporations, and governments in U.S.-organized entities that directly or indirectly control, *inter alia*, common carrier radio station licensees.[4] Pursuant to section 310(b)(4), the Commission may permit higher levels of foreign equity or voting interest in a Commission licensee if it determines that such higher levels are consistent with the public interest, which includes assessing, with the assistance and expertise of the Executive Branch, whether approval of the increase is consistent with U.S. national security, law enforcement, foreign policy, and trade policy concerns.[5] The Commission has adopted rules governing the procedures and setting the conditions for obtaining the Commission's prior approval of transactions involving entities seeking to hold equity or voting interests exceeding the 25 percent limits.[6] Commission approval must be obtained before direct or indirect aggregate foreign

[4] *Id.* § 310(b)(4).

[5] The Commission considers national security, law enforcement, foreign policy and trade policy concerns in its public interest review of an application and will seek input from the Executive Branch on these issues. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 61-66 (1997); Order on Reconsideration, 15 FCC Rcd 18158 (2000). *See also Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership,* Report and Order, 35 FCC Rcd 10927 (2020) (*Executive Branch Review Order*).

[6] 47 CFR §§ 1.5000-1.5004. *See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licenses Under Section 310(b)(4) of the Communications Act of 1934 as Amended*, Second Report and Order, 28 FCC Rcd 5741 (2013) (*2013 Foreign Ownership Order*) (adopting rules for foreign ownership rulings for common carrier and aeronautical licensees); *see also 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*

(continued….)

ownership of a U.S.-organized entity that controls a common carrier radio station license exceeds 25 percent of the U.S. entity's equity interests and/or 25 percent of its voting interests. Further, even after a U.S.-organized entity controlling a licensee is granted a foreign ownership ruling to exceed the statutory limits in section 310(b)(4), prior Commission approval has been required since adoption of the *2013 Foreign Ownership Order* before any foreign individual or entity not previously approved by the Commission acquires, directly or indirectly, more than five percent of direct or indirect equity or voting interest in the entity.[7]

4. Section 310(d) of the Act provides that no radio licenses "shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding [the] license," unless the license holder applies for Commission authority to transfer the license, and the Commission finds that the transfer is in the "public interest, convenience, and necessity."[8]

5. Section 1.948(d) of the rules requires that applicants notify the Commission of a *pro forma* transfer or assignment of a license no later than 30 days after consummation.[9]

6. Lastly, section 1.5001(i) of the rules requires that common carrier applicants or licensees seek and receive specific Commission approval for any foreign individual that holds or would hold, directly or indirectly, more than five percent of the equity and/or voting interests in the applicant or licensee.[10]

7. *Factual Background*. United Wireless Holdings, Inc. is the 100 percent owner of Skytel Spectrum Corporation (Skytel) and a 50 percent owner of A2G Communications (A2G). Both Skytel and A2G hold FCC common carrier licenses. On September 16, 2021, United Wireless filed a letter with the International Bureau[11] and on September 20, 2021, it filed a Petition for Declaratory Ruling with the Commission[12] in which it reported several ownership changes and sought retroactive approval for transactions that occurred after the 2009 grant of the prior Petition for Declaratory Ruling approving 100 percent foreign ownership of United Wireless by Andrew Fitton, a UK citizen.[13]

8. In 2016, Andrew Fitton transferred his 70 percent interest in the Company to Fitton & Co., a holding company organized under the laws of the United Kingdom that Mr. Fitton held 70 percent

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Amended, Report and Order, 31 FCC Rcd 11271 (2016) (*2016 Foreign Ownership Order*) (extending the foreign ownership rules to broadcast licensees and moving the rules to 47 CFR §§ 1.5000-1.5004). Before the adoption of rules in the *2013 Foreign Ownership Order*, foreign ownership declaratory rulings were issued on a case-by-case basis with language and conditions specific to the particular petition.

[7] *2013 Foreign Ownership Order,* 28 FCC Rcd at 5786-87, para. 83; *see also* 47 CFR §1.5004(a)(1) ([T]he 100 percent aggregate allowance "is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or 'group' not previously approved acquires, directly and/or indirectly, more than 5 percent of the U.S. parent's outstanding capital stock (equity) and/or voting stock, or a controlling interest[.]").

[8] 47 U.S.C. § 310(d).

[9] 47 CFR § 1.948.

[10] *Id.* § 1.5001(i)(1).

[11] Letter from Michael Carper, President and Chief Legal Officer, United Wireless Holdings, Inc., to Kimberley Cook, Deputy Chief, Telecommunications and Analysis Division, International Bureau, FCC (Sept. 21, 2021) (on file in ISP-PDR-20210920-00007).

[12] Petition of United Wireless Holdings, Inc. for Declaratory Ruling, File No. ISP-PDR-20210920-00007 (filed Sept. 20, 2021, https://licensing.fcc.gov/myibfs/welcome.do (2021 PDR).

[13] International Authorizations Granted, Rep. No. TEL-01337, Public Notice, 24 FCC Rcd 198 (IB 2009). This grant permitted Mr. Fitton to hold up to 100 percent of United Wireless. Between 2008 and 2014, Mr. Fitton transferred 30 percent of his interest in United Wireless to Michael Carper, a U.S. citizen.

control with the remainder being held in part by his family members (a *pro forma* transfer of control).[14] While Mr. Fitton maintained a controlling interest in the Company, the transaction required that under 47 CFR § 1.948, United Wireless notify the Commission within 30 days of consummation of the transaction. Additionally, as a result of the transaction, Andrew Fitton's spouse, Rosalind Fitton, held an 8.8 percent interest in Fitton & Co. and as such a 6.16 percent interest in United Wireless, which exceeds the five percent threshold in section 1.5001(i) of the Commission's rules[15] and required advance approval that was not obtained.

9. Further, in 2019, United Wireless assigned its 50 percent interest in certain common carrier licenses (held in partnership with an unrelated entity) to A2G, and in exchange, United Wireless received a 50 percent ownership interest in A2G. While this transaction did not involve unvetted foreign owners taking control of Commission licenses, it required specific Commission approval pursuant to section 310(b)(4) of the Act because it involved the control of licenses by foreign citizens.

10. On May 12, 2022, the International Bureau granted the Petition for Declaratory Ruling belatedly approving the above-referenced ownership changes while noting that the grant was subject to possible enforcement action.[16]

11. United Wireless intends to assign its remaining licenses to an FCC-qualified, unaffiliated third party or to cancel those licenses in connection with the winding down of United Wireless's paging activities. United Wireless expects these licensing actions to be initiated within the next few months and in no event later than the end of 2023.

III. TERMS OF AGREEMENT

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

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

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

15. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, United Wireless agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion, against United Wireless concerning the matters that were the subject of the Investigation, or to set for hearing the question of United Wireless' basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[17]

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[14] Specifically, the ownership of Fitton & Co., Ltd is held as follows: Andrew Fitton 70.6 percent; Rosalind Fitton 8.8 percent; Mr. Fitton's four children each own a 4.9 percent interest; and Clare Crabtree holds a 1 percent interest.

[15] 47 CFR § 1.5001(h).

[16] International Authorizations Granted, Rep. No. TEL-02186, Public Notice, DA 22-521 (IB May 12, 2022). The International Bureau referred the matter to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), and the Committee responded that it had no objection to the grant of the Petition for Declaratory Ruling. *Id.*

[17] *See* 47 CFR § 1.93(b).

16. **Admission of Liability**. United Wireless admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 15 herein, that its actions described in paragraphs 7-10 of this Consent Decree violated section 310(b) and (d) of the Communications Act and associated Commission rules.

17. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, United Wireless shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that United Wireless complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the applicable provisions of the Act and the Commission rules relating to foreign ownership and transfer of controls prior to assuming his/her duties.

18. **Compliance Plan**. For purposes of settling the matters set forth herein, United Wireless agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Commission rules relating to foreign ownership and transfer of controls, United Wireless will implement, at a minimum, the following procedures:

(a) **Operating Procedures**. Within ninety (90) calendar days after the Effective Date, United Wireless shall establish Operating Procedures that all Covered Employees must follow to help ensure United Wireless' compliance with the Commission rules relating to foreign ownership and transfer of controls. United Wireless' Operating Procedures shall include internal procedures and policies specifically designed to ensure that United Wireless complies with the Commission rules relating to foreign ownership and transfer of controls. United Wireless shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Commission rules relating to foreign ownership and transfer of controls. With regard to any mergers and acquisitions, and/or disposition of any assets or entities involving FCC authorizations or licenses, United Wireless will include in its standard due diligence checklist a review for FCC authorizations or licenses, filing of necessary FCC applications, consultation with outside counsel at least thirty (30) days prior to closing any such transaction, and confirmation that it has received FCC consent to transfer or assign FCC authorizations or licenses, including approval of any five percent or greater interest by a foreign individual or entity prior to closing the transaction.

(b) **Compliance Manual**. Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Commission's foreign ownership rules and rules regarding assignment/transfers of corporate ownership and set forth the Operating Procedures that Covered Employees shall follow to help ensure United Wireless' compliance with the Commission rules relating to foreign ownership and transfer of controls. United Wireless shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. United Wireless shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

(c) **Compliance Training Program**. United Wireless shall establish and implement a Compliance Training Program on compliance with the Commission rules relating to foreign ownership and transfer of controls and the Operating Procedures. As part of

the Compliance Training Program, Covered Employees shall be advised of United Wireless' obligation to report any regulatory noncompliance as required by paragraph 19 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within one hundred twenty (120) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. United Wireless shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

19. **Reporting Noncompliance**. United Wireless shall report any noncompliance with the Commission rules relating to foreign ownership and transfer of controls and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that United Wireless has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that United Wireless has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission at EnforcementBureauIHD@fcc.gov and to William Knowles-Kellett, Attorney-Advisor, Investigations and Hearings Division, at William.Knowles-Kellett@fcc.gov.

20. **Compliance Reports**. United Wireless shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

(a) Each Compliance Report shall include a detailed description of United Wireless' efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's rules relating to foreign ownership and transfer of controls. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of United Wireless, stating that the Compliance Officer has personal knowledge that United Wireless: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 19 of this Consent Decree; and (iv) has had outside counsel with specific knowledge of the Communications Laws review this Compliance Report.

(b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Commission's rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[18]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of United Wireless, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that United Wireless has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that United Wireless has taken or

[18] 47 CFR § 1.16.

will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

21. All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, with a copy submitted electronically to the Chief, Investigations and Hearings Division, at EnforcementBureauIHD@fcc.gov and to William Knowles-Kellett, Attorney-Advisor, Investigations and Hearings Division, at William.Knowles-Kellett@fcc.gov.

22. **Notification of Termination**. Upon filing a certificate of dissolution or similar document with the states in which United Wireless does business, United Wireless shall provide the Enforcement Bureau with a notification of termination within seven (7) days after filing its certificate of dissolution and the certification of dissolution for any subsidiary or affiliate subject to regulation by the FCC. United Wireless shall send electronic notification of termination to EnforcementBureauIHD@fcc.gov and to William Knowles-Kellett, Attorney-Advisor, Investigations and Hearings Division, at William.Knowles-Kellett@fcc.gov. Such notification of termination shall include the documents that United Wireless filed with the relevant state authority. This notification of termination is independent of any filing obligations that United Wireless has as an FCC regulatee.

23. **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 17 through 20 of this Consent Decree shall expire thirty-six (36) months after the Effective Date or upon dissolution of United Wireless. All obligations thereunder are waived for any period during which United Wireless Holding, Inc. does not hold FCC authorizations.

24. **Civil Penalty**. United Wireless will pay a Civil Penalty to the United States Treasury in the amount of fifteen thousand dollars ($15,000) within thirty (30) calendar days of the Effective Date. United Wireless acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[19] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. United Wireless shall send electronic notification of payment to EnforcementBureauIHD@fcc.gov and to William Knowles-Kellett, Attorney-Advisor, Investigations and Hearings Division, at William.Knowles-Kellett@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[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

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

[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 the CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

26. **Interest, Charges for Collection, and Acceleration of Maturity Date**. After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by United Wireless.

27. **Waivers**. As of the Effective Date, United Wireless waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. United Wireless shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither United Wireless nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and United Wireless shall waive any statutory right to a trial *de novo*. United Wireless hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[24] relating to the matters addressed in this Consent Decree.

28. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not

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

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

containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

30. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which United Wireless does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

34. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

35. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

36. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

_____
Loyaan A. Egal
Chief
Enforcement Bureau

_____
Date

_____
Michael R. Carper
President and Chief CLO
United Wireless Holdings, Inc.

_____
Date

Federal Communications Commission
Washington, D.C. 20554

June 27, 2023

DA 23-550

SMALL ENTITY COMPLIANCE GUIDE

Amendment of Part 74 of the Commission's Rules Related to
Low Power Television and Television Translator Stations
FCC 23-25
MB Docket Nos. 03-185 and 22-261
Adopted April 17, 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 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 *Report and Order*[1] reflects the Commission's effort to update its Part 74 rules following the termination of analog operations in the low power television (LPTV) and TV translator services (collectively "LPTV/translator"). Largely consistent with the proposals set forth in the *Notice of Proposed Rulemaking* (*NPRM*) adopted in July 2022,[2] the *Report and Order* adopts rules to reflect the all-digital nature of these services since the LPTV/translator stations were required to terminate all analog television operations by July 13, 2021, and makes other updates.

In the *Report and Order*, the Commission retains the rule requiring LPTV stations that avail themselves of the provisions set forth in the LPTV Pilot Project Digital Data Services Act (DDSA) digital data service pilot project to comply with the Commission's rule implementing the DDSA. The *Report and Order* amends the Commission's rules for LPTV/translator alphanumeric call signs to account for exhaustion of all two letter call sign combinations for some channel numbers, and consistent with the Commission's policy that all stations have a unique call sign, the *Report and Order* codifies the current practice of assigning a call sign ending in three letters beginning with "AAA" and continuing sequentially through the alphabet ("AAB", "AAC", etc.) in such cases. The *Report and Order* also requires digital LPTV stations to comply with the station identification provisions in section 74.783 applicable to analog operations, updated to reflect digital operations. Additionally, the Commission adopts its proposal to include an option for LPTV stations to use the Program and System Information Protocol (PSIP) to transmit the station's call sign as the "short channel name" on at least one stream of programming that the LPTV station transmits, and mandates the broadcast of the station's assigned transport stream ID (TSID) (or bit stream ID (BSID)), which is the Advanced Television Systems Committee (ATSC) 3.0 functional equivalent), assuming one is assigned.

The *Report and Order* adopts a modified version of the Commission's proposal to require a minor modification application on FCC Form 2100, Schedule C for all station relocations, including those under 500 feet, but allows for coordinate corrections of under three seconds latitude and/or longitude without paying a filing fee. The *Report and Order* also codifies the staff's practice of requiring LPTV stations to transmit with a virtual channel that avoids conflicts with any full power or Class A station's virtual channel in cases where a contour overlap would arise, or with virtual channels chosen by other LPTV stations. Further, the *Report and Order* updates various filing requirements that currently specify submission by letter or other means to the FCC to instead require submission in the Commission's Licensing and Management System (LMS), or otherwise through electronic submission, and clarifies what documentation is required when applications are submitted with various kinds of directional patterns. In addition, the *Report and Order* removes references in the rules to the use of antennas with solely vertical polarization, and requires that the design of broadcast antennas is such that horizontal power is intended to be higher than or equal to the vertical power in all directions.

The *Report and Order* also adopts updates to the coordinates found throughout section 74.709 from NAD 27 to NAD 83 and otherwise conforms the values in section 74.709(a) with those found in section 90.303. These coordinates are used only to determine where the Commission will or will not grant applications. Section 74.703(e) still requires the resolution of actual interference, so the adjustments to section 74.709(a) will not change the required amount of interference protection between LPTV/translator stations and land mobile operations. Finally, the *Report and Order* adopts updates to the

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[1] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, MB Docket No. 03-185, MB Docket No. 22-261, Report and Order, FCC 23-25 (Apr. 17, 2023) (*Report and Order*).

[2] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, *Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations,* Order and Sixth Notice of Proposed Rulemaking, FCC 22-58 (July 13, 2022) (*NPRM*); Erratum, FCC 22-58 (Sept. 9, 2022).

quality standard set forth in section 74.790(g)(3) to reflect that 480i video resolution is "comparable in resolution to analog television programming," consistent with the update the Commission made to its full power television station rules.

The decisions made in this *Report and Order* update the Commission's Part 74 rules to reflect the current operating environment. Also, these decisions will further the Commission's goal of ensuring that its rules clearly reflect the Commission's requirements, and are understandable to all stakeholders.

II. COMPLIANCE REQUIREMENTS

A. Rules Applicable to LPTV/Translator Digital Operations

In the *Report and Order*, the Commission eliminates the analog versions of the Commission's rules and updates the Part 74 rules as necessary for digital operations. All rules in Part 74 will apply to digital operations.

1. Channel Assignments, 47 CFR § 74.702

The amended rules retain the requirements in section 74.702(a) and delete section 74.786. Revised section 74.702(b), which describes LPTV/translator stations' secondary status with respect to a primary station's proposal to change the Table of TV Allotments, applies to digital LPTV/translator stations. Digital Channel Assignments, section 74.786, is deleted to streamline the Commission's rules, because it reflects the same information pertaining to channel assignments found in section 74.702(a). Similarly, the amended rules delete section 74.789 (Broadcast regulations applicable to low power television and television translator stations) and section 74.787(a)(5)(viii) (Licensing) because there is no need to have rules specifying which Part 74 rules apply to digital LPTV/translators following the elimination of the analog rules.

2. Antenna Location, 47 CFR § 74.737

The amended rules apply to digital LPTV/translator stations regarding antenna location, which track and replace a corresponding rule that previously applied to analog LPTV/translator stations.

3. Transmission System Facilities, 47 CFR § 74.750

This section revises the certification of equipment, which continues to apply to digital LPTV/translator stations. Section 74.750(c)(5) is moved to new section 74.795(b)(6), discussed below. In addition, the rules retain other aspects of technical requirements contained in section 74.750(c) (subsections (c)(5) and (c)(8)) and moves them to digital rule section 74.795(b)(6)-(7).

4. Frequency Measurements, 47 CFR § 74.762

The amended rules require LPTV/translator stations to measure the frequency of their output channel as often as necessary to ensure operation consistent with the Advanced Television Systems Committee (ATSC) standard in section 73.682 of the rules. Section 74.762 replaces a reference to section 73.682 with references to section 73.682(d), A/53 Part 2 (for ATSC 1.0), and section 73.682(f)(2) (for ATSC 3.0). Consistent with the existing requirement, these measurements would be required to be made during specified intervals not exceeding 14 months. In the event a station was found to be operating in a manner inconsistent with the standard, it would be required to promptly suspend operation and not resume operation until the transmitter is restored to its assigned frequency. The Commission also identifies the specific portions of section 73.682 that contain the information needed to conduct frequency measurements, rather than citing to the entire broadcast standard (section 73.682 as a whole), which includes audio and video transmission standards irrelevant to frequency measurements, as well as the PSIP standard, which does not apply to LPTV/translators.

5. Licensing, 47 CFR § 74.787

Section 74.787(c) retains the Bureau's practice that if two applications are filed on different days and otherwise have equal processing priority, the filing earlier in time will receive priority. Other rules

reflecting this practice are removed, including section 74.708(b) (Class A TV and digital Class A TV station protection) and section 74.710(a) (Digital low power TV and TV translator station protection).

6. LPTV and TV Translator Transmission System Facilities, 47 CFR § 74.795

New section 74.795(b)(6) requires that an LPTV/translator station's transmission equipment be capable of automatically placing the station in a non-radiating condition if the station's input channel is lost, either due to the absence of a transmitting signal or failure of the receiving portion of the facilities used for rebroadcasting the signal of another station. New section 74.795(b)(7) requires that system facilities' wiring, shielding, and construction comply with good engineering practices.

B. LPTV/Translator Protection of Land Mobile Radio Service, 47 CFR § 74.709

Revised section 74.709 replaces geographic coordinates that use the 1927 North American Datum with the current 1983 North American Datum and otherwise conform the values with those found in Part 90 of the Commission's rules. These updates will not change the required amount of interference protection between LPTV/translator stations and land mobile operations. Absent any actual interference, the Commission does not anticipate requiring an LPTV/translator station to make any relocation or other technical changes solely due to these coordinate updates.

C. Station Identification and Call Signs

1. Station Identification, 47 CFR 74.783(a)(1)

Revisions to Section 74.783 update the rule to reflect digital operations for station identification. Section 74.783(a)(1) is amended to provide an alternative identification method for LPTV stations to replace the outdated option to insert the call sign via International Morse Code at least once every hour. Specifically, the rules now include an option for LPTV stations to use the PSIP to transmit the station's call sign as the "short channel name" on at least one stream of programming that the LPTV station transmits. Any station with an eight character call sign that seeks to identify with this method may opt to drop the "-D" when placing it in the "short channel name" field.

To identify a station using the PSIP "short channel name," a station must request and be assigned a TSID. Stations assigned a TSID must transmit that TSID, and the TSID requirement is in addition to, and not in place of, one of the other station identification requirements. The same requirement applies with respect to a station's BSID, which has the same functions as the TSID, but in the ATSC 3.0 context.

2. Call signs, 47 CFR § 74.791(d)

New section 74.791(d) reflects the Media Bureau's current call sign assignment protocol for LPTV and TV translator stations. Accordingly, since all two letter call sign combinations for certain channels have been exhausted for several years, stations will continue to be assigned a three letter call sign beginning with "AAA," continuing sequentially through the alphabet for the third letter ("AAB", "AAC", etc.) in such cases.

D. Technical Modifications

1. Power limitations, 47 CFR § 74.735

The amended section 74.735(c) requires that an antenna should be designed such that the horizontal power is intended to be higher than or equal to the vertical power in all directions. Revised section 74.735(c)(2) requires the submission of documentation that the antenna is designed such that horizontal power is intended to be higher than or equal to the vertical power in all directions. Sections containing references to antennas with solely vertical polarization are removed. This includes sections 74.735(c) (Power limitations) and 74.750(f) (Transmission system facilities) as LMS does not and has not allowed stations to specify a vertical polarized antenna.

Section 74.735(c)(4) updates the Commission's requirements for submitting antenna pattern plots in applications. The Commission revises this rule to require licensees to submit all azimuth plane patterns

in the form of a .pdf attachment to an application filed in LMS in a size sufficient to be easily viewed, instead of on letter-size paper. The Commission also clarifies that similar azimuth plane patterns are required for elevation patterns (section 74.735(c)(6)), and matrix patterns should be submitted as spreadsheets (section 74.735(c)(7)), in exhibits in the LMS form.

2. Modification of transmission systems 47 CFR § 74.751

Section 74.751(b)(4) is updated to require a minor modification application for all antenna relocations on FCC Form 2100, Schedule C. Section 74.751(c) is also amended to permit LPTV and TV translator stations to correct station coordinates in the absence of any physical change in location or other licensed parameters where such change is not more than three seconds latitude and/or three seconds longitude. An exhibit should be attached to the application(s) specifying it is a coordinate correction. Stations seeking to correct coordinates by less than three seconds of latitude and/or longitude may do so without paying a filing fee.

Two subsections of section 74.751 are deleted as irrelevant and unnecessary. Section 74.751(b)(6) is deleted entirely regarding the transmitter's location, as it is not relevant in an analysis of interference, service, and loss. The prior section 74.751(c), which required LPTV and TV translator stations to notify the Commission in writing of certain other equipment changes, is also deleted as this information is not relevant to the Commission's application decision-making process.

3. Permissible service of TV translator and LPTV stations, 47 USC §§ 74.790(g)(3), (n)

Section 74.790(g)(3) updates the video quality standard set forth in the rule to reflect that 480i video resolution is "comparable in resolution to analog television programming," which is consistent with the update the Commission made to its full power station rules in section 73.624(b). The Commission also adopts its proposal that the desired-to-undesired (D/U) ratios for ATSC 3.0 into TV and vice versa for predicting interference to stations are assumed to be similar and need not be differentiated in the rules beyond TV service.

New section 74.790(n) adopts the Media Bureau's practice of requiring LPTV stations to transmit with a virtual channel that avoids conflicts with any full power or Class A station's virtual channel in cases where a contour overlap would arise, or with virtual channels chosen by other LPTV stations.

4. Electronic Filing and Submissions

The Commission also updates certain rules to require electronic filing that currently specify the filing of a letter or similar submission for relief with the Commission. The following rules will instead require submission in LMS: 47 CFR §§ 74.703(h) (Interference); 74.734(a)(4) (Attended and unattended operation); and 74.763(b) (Time of operation). Section 74.784(b) (Rebroadcasts) now requires e-mail submission of rebroadcast consent to TVRebroadcast@fcc.gov, the Media Bureau, Video Division's e-mail box, instead of by letter.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The amended and revised rules contain new information collection requirements for LPTV/translator stations. The details and specifics of the reporting and recordkeeping requirements adopted in the *Report and Order* are discussed in Section II of this guide under the Compliance Requirements.

IV. IMPLEMENTATION DATE

The rules in the *Report and Order* will become effective June 12, 2023, except for the following rules in the *Report and Order* that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act: 47 CFR §§ 74.703, 74.734, 74.735, 74.751, 74.763, and 74.784. These rules will 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 *Part 74 Report and Order* is available at: https://www.fcc.gov/document/fcc-adopts-amendments-lptv-and-tv-translator-rules.

A copy of the Federal Register Summary of the *Part 74 Report and Order* is available at: https://www.govinfo.gov/content/pkg/FR-2023-05-12/pdf/2023-09843.pdf.

Federal Communications Commission
Washington, D.C. 20554

June 27, 2023

DA 23-551
In Reply Refer to:
1800B3-IB
Released: **June 27, 2023**

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In re: **W232DE (formerly W257BW), Potomac, MD**
Facility ID No. 141566
File Nos. BLFT-20190507ACA as modified by
File No. 0000199978

Application for License to Cover
Informal Objection

Dear Licensees:

We have before us: (1) the referenced application of WIN Radio Broadcasting Corp. (WIN) for a license to cover modified facilities of FM translator station, W232DE,[1] Potomac, Maryland (Translator);[2] (2) an objection against the application by Historic Takoma, Inc. (Takoma), licensee of co-channel Low Power FM (LPFM) station WOWD-LP, Takoma Park, Maryland;[3] and (3) related pleadings. For the reasons set forth below, we grant the Objection in part and otherwise deny Takoma's filing. Specifically, we agree that WIN apparently violated Commission rules (Rules) by constructing the Translator with an incorrect antenna and, thus, incorrectly certifying to constructing as authorized. However, we conclude

[1] We note that, as a result of an approved but not yet licensed move to Channel 268 the Translator's call sign will become W268DN.

[2] Application File No. BLFT-20190507ACA (rec. May 7, 2019) (2019 License Application).

[3] Takoma Petition to Deny, or Alternatively, Informal Objection (rec. May 13, 2019) (Objection). We will consider Takoma's pleading against the 2019 License Application as an informal objection because petitions to deny to not lie against such applications. *See* 47 U.S.C. § 309 (b)-(d); 47 CFR §§ 73.3584(a), 73.3587.

that the appropriate consequence is issuance of a contemporaneous Notice of Apparent Liability and not, as Takoma posits, cancellation of the license.

BACKGROUND

WIN is the licensee of WCTN(AM), Potomac-Cabin John, MD. On January 29, 2016, WIN applied for Commission consent to acquire the Translator,[4] so that it could improve reception of WCTN's programming by rebroadcasting the AM signal over FM spectrum. At the time, the Translator was licensed to Channel 257 at New Tripoli, Pennsylvania. WIN proposed to relocate the Translator to Channel 232 at Potomac, Maryland by mounting a circularly polarized, two-bay, Shively model 6810, directional antenna at 56 meters above ground level on the existing northwest tower of the AM station's antenna array.[5] The move was possible because the Commission's AM Revitalization efforts established a one-time filing window in which certain AM licensees could move an associated FM translator up to 250 miles as a minor change.[6] The Media Bureau (Bureau) approved the assignment of license on March 31, 2016. It granted a Construction Permit on August 9, 2016 requiring WIN to complete the Maryland facilities within three years, *i.e.,* by August 9, 2019.

WIN removed the Translator from the air in Pennsylvania on September 8, 2016, pending completion of construction in Maryland. Under section 312(g) of the Communications Act of 1934, as amended (Act), a broadcast license automatically expires as a matter of law upon twelve consecutive months of silence, and case law has indicated that unauthorized operation is considered to be no better than silence.[7] Thus, when the Bureau granted WIN's request for special temporary authority (STA) to keep the Translator off the air, the Bureau warned that the Translator's license would expire pursuant to section 312(g) if WIN did not resume Translator operations before September 9, 2017.

On August 30, 2017, WIN filed an application to license the Translator's Maryland facilities, certifying that it had constructed as authorized in the Construction Permit and responding "yes" that it was using a properly-oriented directional antenna.[8] That same day, WIN notified the Bureau that it had resumed operations pursuant to program test authority. On September 8, 2017, Takoma filed an objection to the 2017 License Application, alleging that the Translator was causing interference to Takoma's LPFM station which operates on the same channel, in the same market.[9] The Bureau required WIN to address the alleged interference[10] but WIN did not respond. Takoma supplemented its Interference Complaint in April 2018, in

[4] Application File No. BALFT-20160129AJG (rec. Jan. 29, 2016/granted Mar. 31, 2016).

[5] Application File No. BPFT-20160129AUE (rec. Jan 29, 2016/granted Aug. 9, 2016), Exh. 12-B-1 (Permit Application/Construction Permit).

[6] Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications, Public Notice, DA 15-1491 (MB 2015).

[7] 47 U.S.C. § 312(g); *see Eagle Broad. Group, Inc. v. FCC*, 563 F.3d 543, 554 (D.C. Cir. 2009) (*Eagle*).

[8] *See* File. No. BLFT-20170830ABL (2017 License Application), Section III, Quest. 4, 7.

[9] Takoma, Informal Objection to License Application, Request for Rescission of Underlying Construction Permit, and/or Designation of License Application for Hearing (or in the Alternative, Interference Complaint) (Sept. 8, 2017) (Interference Complaint).

[10] FM translators and LPFM stations are both secondary broadcast services. Because the LPFM station was built first, it was entitled to interference protection from the later-built Translator.

response to a photograph WIN submitted in a related matter, alleging that WIN had constructed an unauthorized antenna.[11]

On May 8, 2018, the Bureau dismissed the 2017 License Application because WIN had not made any effort to resolve the Interference Complaint.[12] The Bureau ordered WIN to suspend operations of the Translator immediately and WIN complied. The Bureau, thus, found it unnecessary to address Takoma's allegations of an unauthorized antenna.

On May 25, 2018, Takoma filed a request to delete the Translator from the Commission's database, arguing for the first time that the Translator's license had expired pursuant to section 312(g) of the Act. Specifically, Takoma argued that WIN had not resumed operations with an authorized antenna by September 9, 2017, *i.e.,* within 12 months of taking the Translator silent in Pennsylvania. Takoma also argued that WIN's certification of construction as authorized was false, affecting its character qualifications. WIN did not respond.

On May 7, 2019, just short of one year from the date that the Bureau ordered the Translator off the air but still within the three-year period that the Construction Permit allowed for the Maryland modification, WIN filed the 2019 License Application. The 2019 License Application, like the 2017 License Application, sought a license to cover the Construction Permit and certified to completion of construction as authorized. However, in an exhibit, WIN acknowledged that it had not constructed the antenna specified in the application for the Construction Permit.[13] WIN explains that the Shively antenna proved too large and heavy for the existing tower without additional bracing, so it substituted a smaller, lighter antenna, *i.e.,* a Jampro, model JLLP-2.[14] WIN contends that the substitution complies with the Construction Permit because WIN installed the new antenna in accordance with instructions from the manufacturer.[15]

The Bureau mistakenly granted the 2019 License Application on May 13, 2019, unaware that Takoma had that same day filed its Objection. On May 14, 2019, the Bureau rescinded the grant and returned the 2019 License Application to pending status in order to consider the Objection. Takoma argues that the 2019 License Application is not grantable because the Translator's underlying license no longer exists, having automatically become a nullity pursuant to section 312(g) of the Act for failure to resume operations with authorized facilities by September 9, 2017. WIN did not respond to the Objection.

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[11] Specifically, on April 5, 2018, WIN filed an application for direct measurement of power for the WCTN(AM) facilities, as the Rules require in certain cases of additional equipment mounted on an AM tower, including the instant addition of the Translator antenna to WIN's AM array. *See* Application File No. BZ-20180405ACG (Measurement Application). *Cf.* 47 CFR § 1.30003(a). The Measurement Application included a September 2017 photograph of the tower from which Takoma concluded that the Translator's antenna differed from that approved. Takoma confirmed its conclusion based on photos that a WOWD-LP listener took on April 2, 2018.

[12] *See* Letter from James D. Bradshaw, Senior Deputy Chief, Audio Div. to WIN, Ref. 1800B3-KV (MB May 8, 2018).

[13] 2019 License Application, Exh. 9. WIN incorrectly filed the 2019 License Application as a modification of the Construction Permit. Because WIN specified a different antenna, WIN should instead have applied for a new construction permit as a modification to a licensed facility. FM translator licensees are not permitted to change antennas as a modification to a construction permit. *See* 47 CFR § 74.1251(b)(2).

[14] 2019 License Application, Exh. 9.

[15] *Id.*

While these matters were pending, all broadcast licensees in Maryland were required to file applications for license renewal. WIN filed a license renewal application on July 2, 2019[16] and Takoma filed a Petition to Deny. The Renewal Application and Petition remain pending and the Bureau is not acting upon them at the present time. However, some of the arguments therein build upon matters raised in the instant licensing proceeding and we will discuss them briefly because they further explain the parties' respective positions. For example, WIN states in the Renewal Application that the Translator is on-air in Maryland and has no Rule violations or unresolved character issues. Takoma, however, argues that WIN violated the Rules by building an unauthorized antenna, is operating without authority because its license expired automatically in 2017 pursuant to Section 312(g), and that there is, thus, no license to renew.[17] Takoma also alleges again that WIN made false certifications and, thus, lacks the necessary character qualifications to remain a broadcast licensee.[18] In an Opposition,[19] WIN argues that its antenna substitution: (1) was required for valid engineering reasons; (2) complied with directional antenna requirements in sections 73.315 and 74.1235 of the Rules; and (3) did not violate the "literal requirements" of its Construction Permit or license applications. WIN contends that the antenna substitution was permissible because the Construction Permit does not specify any particular model, only the parameters that the antenna must achieve. WIN further argues that the substitution had no effect on the antenna's pattern of radiation and was installed by a reputable company according to manufacturer instructions.[20] In a Reply, Takoma argues that WIN's position is baseless.[21]

Takoma's Objection to the 2019 License Application does not allege interference, although the facilities therein are seemingly identical to those that led to the Interference Complaint against the 2017 License Application. The Bureau sent an inquiry letter to Takoma in April 2021 asking whether the facilities in the 2019 License Application caused interference and, if so, advising it to supply information under new interference standards the Commission had since adopted.[22] Takoma responded that it had no desire or need to make an interference showing against the 2019 License Application under the revised standards because it had already demonstrated interference in 2017 under then-applicable standards.[23] WIN's counsel thereafter alleged that the Inquiry Letter was factually incorrect because the 2017 facilities that raised interference issues were different from those in 2019 License Application. Counsel stated that although the parameters in the two applications were identical, the 2017 facilities inadvertently operated

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[16] Application File No. 0000075484 (rec. July 2, 2019) (Renewal Application). WIN submitted the Renewal Application about a month late because it was unsure whether, following rescission of the 2019 License Application grant, the Translator should file as a Maryland or Pennsylvania station. Maryland renewal applications were due by June 3, 2019, but Pennsylvania applications were not due until April 2, 2022. In late-June 2019, Bureau staff advised WIN to file within the Maryland cycle because the Commission's database associated the Translator with Maryland. *See* WIN, Opposition to Petition to Deny (rec. Sept. 16, 2019) (Opposition) at 7, Attachments 1, 2. Given these circumstances we will not, as Takoma suggests, treat the Renewal Application as deficient due to late-filing.

[17] Petition at 2.

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

[19] Opposition, *supra* note 16.

[20] *Id.* at 3.

[21] Takoma, Reply to Opposition to Petition to Deny, Pleading File No. 0000087056 (rec. Oct. 22, 2019) at 5.

[22] Request for Additional Information from Albert Shuldiner, Chief, Audio Div. to Michael W. Richards, Esq., File No. BLFT-20190507ACA (MB Apr. 20, 2021).

[23] Takoma, Response of Historic Takoma, Inc. to Commission Request for Information (May 7, 2021) at 2.

at a higher than authorized transmitter power output (TPO) and effective radiation power (ERP) due to a miscalculation in the length of a cable, which it claimed to have corrected.[24]
WIN thereafter filed and the Bureau granted two additional applications for minor modification, each of which was uncontested. The first proposed a channel change from channel 232 (the channel on which it had caused interference to Takoma) to channel 268, but continued to specify the original Shively antenna.[25] The second also specified channel 268, but corrected the antenna to the Jampro antenna actually in use.[26] WIN has until October 2025 to construct on channel 268. Grant of the recent modifications did not moot the issues currently under consideration because the Bureau must determine whether the Translator has any continuing authorization and, if so, whether the Translator can be licensed for facilities constructed with a Jampro antenna.

DISCUSSION

Among the primary issues in dispute are: (1) whether WIN had authority to construct an antenna different than originally specified; (2) whether operation with the substitute antenna was no better than silence for purposes of section 312(g); (3) whether, consistent with section 312(g), there still exists an underlying license for the Translator that can be modified and renewed; and (4) whether, if there is still a license, WIN meets the criteria for license renewal under section 309(k) of the Act.[27] We answer these questions as follows: (1) WIN apparently violated the Rules by using an unauthorized antenna; (2) WIN's use of the wrong antenna but on the authorized channel and correct location was not equivalent to silence for purposes of section 312(g); (3) the Translator continues to have a license that can be modified; and (4) WIN's apparent violations are being addressed in a contemporaneous Notice of Apparent Liability.

Procedural Matters. We resolve two procedural issues in Takoma's favor. First, we will consider Takoma's Objection to the 2019 License Application even though section 319(c) of the Act

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[24] *See* E-mail from Geoff Bentley (Apr. 21, 2021) ("The staff's letter includes at least one serious erroneous statement of 'fact.' It states that the translator resumed operation with the same facilities as those that were alleged to cause interference. In fact, transmitter output power was significantly reduced. For a variety of reasons, the licensee believes the "objections" are specious. However, in evaluating the LPFM station's response the staff should be aware that the translator licensee long ago took significant measures that should have substantially reduced the probability of cognizable interference."). When staff responded that they did not see any modification application to explain any the difference in parameters between the facilities in the 2017 and 2019 License Applications, counsel responded that "The parameters are not different. Because of a miscalculation about the length of the coax, TPO had to be reduced to reach authorized ERP. In other words, the translator had been, originally, operating over the authorized ERP." E-mail from Geoff Bentley (Apr. 21, 2021). Staff provided copies of this *ex parte* correspondence to Takoma's counsel.

[25] Application File No. 0000199978 (granted Oct. 24, 2022) (2022 Modification). The Bureau granted the 2022 Modification Application as a minor modification of the 2019 License Application which was still pending, although WIN filed the application as a minor modification of the Translator's underlying license (File No. BLFT-20070830ABA). The 2022 Modification proposed the same site as the 2019 License Application, reduced the ERP to 100 Watts (0.1 kW), and proposed a Shively 6800 Series directional antenna with a different antenna pattern and reduced coverage area from that of the 2019 License Application. The 2022 Modification proposed to use channel 268, thereby changing the callsign to W268DN.

[26] Application File No. 0000212383 (granted Apr. 5, 2023) (2023 Modification). The 2023 Modification had all the same technical parameters as the 2022 Modification except that it reports a change in the antenna's make and model to a Jampro Model JLLP-1T. *See* WCTN AM W268DN Translator Change Antenna Make Model Only.pdf (attached to 2023 Modification).

[27] 47 U.S.C. § 309(k).

imposes a stringent standard on such challenges.[28] As long as "all the terms, conditions, and obligations set forth in the application and permit have been fully met," an applicant for a license to cover a construction permit is entitled to a presumption that the public interest determination made during the underlying construction permit proceeding continues in effect.[29] Consideration of Takoma's Objection is appropriate because its allegation that WIN did not meet all terms of the Construction Permit potentially negates any public interest presumption to which WIN might otherwise have been entitled.

Second, we reject WIN's argument that the Bureau should not consider Takoma's filings due to lack of standing. Even if we were to accept WIN's contention that the location of the LPFM and Translator stations in the same market does not necessarily confer standing to Takoma, we would recognize a nexus between the two stations stemming from the prior Interference Complaint which required the Translator to suspend operations.

Use of a Substitute Antenna. We find that WIN apparently violated the Rules by constructing and operating with an unauthorized antenna. Section 74.1251 requires FM translator licensees to apply for and receive authority prior to making any changes to the antenna system.[30] WIN concedes that it substituted the antenna, but argues that it was allowed to do so because the Construction Permit does not specify a particular antenna model and the substituted antenna could achieve the same directional pattern.[31] WIN emphasizes that the Jampro and Shively antennas are each two-bay, directional antennas mounted on the same tower and at the same height specified in the Construction Permit.[32] WIN further argues that it had a valid public safety reason for making the substitution, *i.e.,* to prevent potential tower collapse in the wind if loaded with heavier equipment.[33] Nevertheless, we reject WIN's contention that the substitution was permissible without further authorization. Even under the circumstances presented, all permittees and licensees of FM translators are required to file a formal application on FCC Form 349 to make equipment modifications including, *inter alia,* "a change in the transmitting antenna system, including the direction of radiation or directive antenna pattern."[34] WIN apparently violated the Rules because it did not file an application prior to substituting one directional antenna for another.

The fact that some information, including antenna models, is not specifically identified on construction permits does not, as WIN argues, mean that a permittee can change such factors at will. With limited exceptions explicit in the Rules, each permittee must build the facilities proposed or file a formal application to obtain consent prior to making desired changes.[35] In this manner, the Bureau

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[28] *Id.* § 319(c).

[29] *See id.*; *Focus Cable of Oakland, Inc*., Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

[30] 47 CFR § 74.1251(b)(2).

[31] Opposition at 5 (arguing that "Contrary to the false impression created by petitioners, the FCC does not authorize, direct or otherwise mandate the installation of a specific antenna." and "The intent behind requesting information on the construction permit application form about the antenna model is to verify, for reference purposes, that the proposed radiation pattern can be replicated by an available antenna."). WIN also contends that the application form does not ask what antenna was installed, but only requires a certification that the antenna was mounted in accordance with manufacturer instructions. *Id.* at 6. WIN further argues that operation of the Translator in Maryland to rebroadcast a co-owned AM station serves the Commission's objective to improve AM service, especially since WIN is minority-owned and has broadcast programming principally directed to members of minority groups.

[32] *Id. See* Supplementary Engineering Statement (attached to 2019 License Application).

[33] Opposition at 4-5.

[34] 47 CFR § 74.1251(b)(2).

[35] Id. § 74.1251(a)-(b).

remains aware of the nature of facilities in use and can minimize the possibility that secondary facilities like FM translators will cause interference.[36] Also, because the Bureau is fully aware of the equipment in use, it is able to act relatively quickly on the permittee's application for a license to cover the construction by relying upon a permittee's certification without having to repeat its earlier technical analysis.[37] The Commission does not, as WIN suggests, ask applicants to identify a proposed antenna simply for reference purposes. WIN's use of the substitute antenna, without first applying for consent to make that change, was an unauthorized modification of the Translator's antenna system. The safety-related reason for the substitution does not override the requirement to obtain Commission approval prior to altering an antenna system. Nor does the fact that WIN operated with some of the correct parameters mitigate the apparent violation although, as discussed below, it may be material to determining whether the Translator's license expired pursuant to section 312(g).

Given that the focus of the present proceeding is the 2019 License Application, our consideration of Takoma's allegations of false certifications is limited to that particular filing. We do not find any actionably false certification therein. As discussed above, WIN incorrectly certified in the 2019 License Application that it had constructed as authorized but simultaneously provided an exhibit which disclosed the substitution of a Jampro for a Shively antenna. The 2019 Application, thus, makes it evident that WIN did not build the authorized antenna and does not reflect an intent to deceive the Commission therein. We do not yet reach Takoma's allegations of false certifications in other filings and the impact, if any, on WIN's character qualifications. We expect to consider those matters in the context of the pending Renewal Application.

Automatic Expiration under Section 312(g). We find that the Translator's twelve consecutive month period of combined silence and operation with an unauthorized antenna (at the correct site and channel) did not cause its authorization to expire. Most cases resulting in automatic expiration pursuant to section 312(g) have involved periods of silence coupled with attempted resumption at the wrong site and/or on the wrong channel.[38] In that context, the Commission and D.C. Circuit have concluded that the unauthorized operation is no better than silence. For example, the court stated in *Eagle* that section 312(g)'s requirement of operation must be read in conjunction with section 310's prohibition of unlicensed operation, and that it, thus, would be "absurd" to accept the broadcaster's contention at oral argument that a station licensed at a site in Arizona could avoid expiration by operating from an unlicensed location in New York.[39]

The Commission, in the recent *Absolute* proceeding, acknowledged this section 312(g) precedent, but ruled that its applicability is limited to operation at the wrong site and/or channel.[40] The Commission clarified that non-conforming operation that is inconsistent with a different aspect of a station's

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[36] *Compare* 47 CFR § 73.1690 (limited circumstances in which modification of full service broadcast stations are permitted without prior application); *Amendments of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, 12 FCC Rcd 12371 (1997).

[37] WIN's substitution of antennas was inconsistent with the Construction Permit, which the Bureau issued in reliance on information WIN provided in WIN's Permit Application. The constructed antenna was made by a different manufacturer and had different features such as size, weight, and shape from the antenna that WIN specified in its Permit Application. Prior to acting upon an application for a broadcast construction permit, the Bureau fully analyzes the information that the applicant provides therein. Because the resulting permit is based on the applicant's own proposal, it is unnecessary for the Commission to repeat and incorporate every detail into the resulting construction permit.

[38] *Absolute Broad. LLC,* Memorandum Opinion and Order, FCC 23-38 (rel. May 17, 2023), para. 19, n. 68 and cases cited therein (*Absolute*).

[39] *See Eagle*, 563 F.3d at 552.

[40] *Absolute,* para. 20.

authorization does not lead to loss of license under section 312(g), even if it lasts for a year. The facts of *Absolute* closely mirror those of the instant case. There, as here, an AM licensee rebroadcast its signal over a co-owned FM translator located at the correct site and channel but with an unauthorized antenna. The Commission expressed its belief that Congress, which adopted section 312(g) to address spectrum warehousing by silent stations without significant discussion or analysis, did not intend to establish automatic expiration for all rule violations lasting twelve consecutive months. The Commission similarly believed that the D.C. Circuit panel that issued the *Eagle* decision had no such intention when it held that a licensee could not avoid automatic license expiration by operating from a distant unauthorized location.[41] Although the Commission held that section 312(g) was inapplicable in *Absolute,* it directed the Bureau to fashion appropriate enforcement action for the use of an unauthorized antenna.[42] Similarly, we find that WIN's combined silence and operation with an unauthorized antenna for twelve consecutive months did not result in automatic expiration but is an apparent violation that warrants enforcement action. Accordingly, we are concurrently issuing a Notice of Apparent Liability for monetary forfeiture.

Interference Inquiry. Although the facilities specified in the 2019 License Application are nominally the same as those that caused the interference in 2017, it appears that subsequent WIN actions have eliminated the interference. WIN suggests that the earlier interference was not caused by the antenna substitution but, rather, by excessive ERP caused by a since-corrected miscalculation in the length of a cable.[43] As noted previously, the Bureau invited Takoma to make a showing of any continued interference in 2021 using the Commission's revised standards. Takoma declined to do so. Accordingly, WIN's suggestion that its revision of the cable length resolved the problem appears reasonable. Moreover, the Bureau has since approved additional modifications that could reasonably be expected to eliminate any interference to Takoma if it still existed. Of particular note, the Bureau has approved WIN's proposed move to Channel 268 (101.5 MHz) rather than Channel 232 (94.3 MHz) on which Takoma operates.[44] Takoma did not contest that application. We conclude that interference to Takoma is no longer an issue and will grant the 2019 License Application.

Conclusion/Actions. Accordingly, the Objection of Historic Takoma, Inc. to Applications of WIN Radio Broadcasting Corp. for a covering license for W232DE, Potomac, Maryland, Facility ID No. 141566, IS GRANTED IN PART to the extent that we determine that WIN apparently violated Commission Rules and are concurrently issuing a Notice of Apparent Liability for Forfeiture BUT

[41] The Commission noted that when its licensing divisions have confronted situations other than those involving silence, unauthorized location, or the "real estate equivalent" of an unauthorized channel, they have consistently declined to go to the extreme of cancelling licenses for infractions lasting longer than a year. *Absolute,* para. 19. Instead, they have addressed violations using the existing enforcement framework set out in the Rules. *Id.*

[42] *Absolute,* para. 21.

[43] *See supra,* note 24.

[44] WIN did not base the channel change on any need to resolve interference caused to Takoma. Rather, WIN sought to move to Channel 268 to mitigate interference it predicted the Translator would receive on Channel 232 from full service station WLZV(FM), Buckland, VA (Channel 232A). *See* FM Translator Non-Adjacent Channel Change Minor Modification Required Interference Mitigation Showing (attached to 2022 and 2023 Modifications).

DENIED in all other respects.

The Application of WIN Radio Broadcasting Corp. for a covering license (File No. BLFT-20190507ACA) FM Translator, W232DE, Potomac, Maryland, Facility ID No. 141566 IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of	)	
	)	
WIN RADIO BROADCASTING CORP.	)	Facility ID No.: 141566
	)	NAL/Acct. No.: MB-202341410012
Licensee of FM Translator Station W232DE,	)	FRN: 0010174837
Potomac, Maryland	)	File No. BLFT-20190507ACA as modified
	)	by File No. 0000199978

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 27, 2023 **Released: June 27, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has in a Letter Order issued concurrently with this action[1] granted an application of WIN Radio Broadcasting Corp. (WIN) for a license to cover modified facilities of FM translator station, W232DE, Potomac, Maryland (Station),[2] subject to further enforcement action for related apparent violations. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find that WIN failed to file a required form to obtain consent to use a different antenna and apparently willfully violated section 74.1251 of the Commission's rules (Rules)[3] by constructing and operating with an unauthorized antenna. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of seven thousand five hundred dollars ($7,500).

II. BACKGROUND

2. A more detailed history along with related facts and arguments appears in the concurrent Letter Order and need not be repeated in depth here. Section 74.1251(b)(2) of the Rules requires FM translator licensees to request and receive authority prior to making any changes to their antenna system.[4] The request must be made by formal application on Form 349.[5] In 2016, the Bureau granted WIN's request for authority to modify the Translator's facilities using a Shively model 6810 directional antenna.[6] In 2017, another broadcaster in the market alleged that WIN had not constructed as authorized. WIN later conceded in the Application to license the modified facilities that it had substituted a different directional

[1] *WIN Radio Broad. Corp.*, Letter Order, File No. BLFT-20190507ACA (rel. June X, 2023).

[2] Application of WIN Radio Broadcasting Corp. for License, Application File No. BLFT-20190507ACA (filed May 7, 2019) (Application). We note that, as a result of an approved but not yet licensed move to Channel 268 the Translator's call sign will become W268DN.

[3] 47 CFR § 74.1251.

[4] *Id.* § 74.1251(b)(2).

[5] *Id.* § 74.1251(b).

[6] Application File No. BPFT-20160129AUE (rec. Jan 29, 2016/granted Aug. 9, 2016), Exh. 12-B-1 (Permit Application/Construction Permit).

antenna, *i.e.,* a Jampro model JLLP-2.[7] The antenna originally requested differed from that actually built in manufacturer, size, weight, and shape. WIN stated that it substituted a lighter antenna for a heavier one so that it could mount the antenna on the tower without constructing additional bracing.[8] The Letter Order rejects WIN's argument that no prior authority was needed to substitute an antenna capable of achieving the same directional pattern and mounted in accordance with manufacturer instructions. The Rules make no such exception.

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $7,500. In this case, WIN failed to file an application for authority to alter its antenna system as required by section 74.1251(b) of the Rules.[9] It then constructed and operated with an unauthorized antenna, an apparent violation of section 74.1251(b)(2).

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[10] 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.[11] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,[12] and the Commission has so interpreted the term in the section 503(b) context.[13] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[14]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amounts of $3,000 for failure to file a required form or information and $10,000 for construction or operation without an instrument of authorization for the service.[15] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[16]

6. In this case, WIN failed to timely file an application to modify its antenna system as required by section 74.1251(b) of the Rules WIN and then constructed and operated a nonconforming

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[7] *See* Application, Exh. 9.

[8] *Id*.

[9] 47 CFR § 74.1251(b).

[10] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[11] 47 U.S.C. § 312(f)(1).

[12] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[13] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

[14] 47 U.S.C. § 312(f)(2).

[15] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[16] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

antenna for which it held no authorization.[17] WIN professed a belief that antenna substitution was permissible[18] but that explanation is "at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."[19] As discussed above, the base forfeiture amounts for these violations are $3,000 and $10,000 respectively, *i.e.,* a total of $13,000. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[20] we will reduce the forfeiture from the base amount to $7,500 because, as an FM translator, the Station is providing a secondary service.[21]

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[22] and sections 1.80 and 0.283(d) of the Commission's rules,[23] that WIN Radio Broadcasting Corp., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand five hundred dollars ($7,500)** for its apparent willful violation of section 74.1251(b) of the Commission's rules.[24]

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,[25] within thirty (30) days of the release date of this *NAL*, WIN Radio Broadcasting Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[26] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to Irene.Bleiweiss@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[27]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to

[17] *See* 47 CFR § 74.1251(b).

[18] *Supra* note 7.

[19] *Southern California*, 6 FCC Rcd at 4387, para. 3.

[20] *Supra* note 15.

[21] The Bureau has reduced forfeiture amounts for rule violations by secondary stations in prior cases. *See*, *e.g.*, *Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288 (Aud. Div. 2009) (FM translator station); *Soul's Harbor Assembly of God Church,* Forfeiture Order, 24 FCC Rcd 8406 (Aud. Div. 2009) (LPFM station); *School District of Haverford Township,* Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2896, 2989 (Aud. Div. 2008) (Class D FM station); *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021).

[22] 47 U.S.C. § 503(b).

[23] 47 CFR §§ 1.80 and 0.283.

[24] *Id.* § 74.1251(b).

[25] *Id.* § 1.80.

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

[27] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[28] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. with the first four digits, denoting the year, excluded (e.g., NAL 202312345678 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 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. with the first four digits, denoting the year, excluded (e.g., NAL 202312345678 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.

10. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[29] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

11. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[30] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to Irene.Bleiweiss@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

[29] *See* 47 CFR § 1.1914.

[30] *Id.* §§ 1.16 and 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.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[31]

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.[32]

13. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Richard S. Yoon, President, WIN Radio Broadcasting Corp., 100-25 Queens Blvd., Suite 1CC, Forest Hills, N.Y., 11375 and by electronic mail to richardyoonmd@yahoo.com. A copy shall also be sent to Station's representative, David O'Connor, Esq., Wilkinson Barker Knauer, LLP, 1800 M St., NW, Suite 800N, Washington, D.C. 20036 and by electronic mail to doconnor@wbklaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

[32] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-553
Released: June 28, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES EFFECTIVE DATE FOR MANDATORY ELECTRONIC FILING OF CALEA SYSTEM SECURITY AND INTEGRITY PLANS

PS Docket No. 22-217

On May 15, 2023, the Public Safety and Homeland Security Bureau (Bureau) released an *Order* amending Section 1.20005[1] of the Commission's rules to require electronic filing of new and updated System Security and Integrity (SSI) plans by entities subject to the Communications Assistance for Law Enforcement Act (CALEA).[2] On May 30, 2023, the Office of the Federal Register published a summary of the *Order*.[3] Accordingly, the effective date for the rule adopted in the *Order* is June 29, 2023.[4]

For further information, contact John A. Evanoff, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau at 202-418-0848 or FCC-CALEAinquiries@fcc.gov.

[1] 47 CFR § 1.20005.

[2] *Communications Assistance for Law Enforcement Act Electronic Filing System (CEFS)*, PS Docket No. 22-217, Order, DA 23-392 (PSHSB 2023). The Bureau previously announced the availability of CEFS for voluntary filing of SSI Plans on December 12, 2022. *Public Safety Homeland Security Bureau Announces Availability Of CALEA Electronic Filing System (CEFS) For Voluntary Filing Of System Security And Integrity Plans*, Public Notice, DA 22-1299 (PSHSB 2022).

[3] Communications Assistance for Law Enforcement Act, Mandatory Electronic Filing of System Security and Integrity Policies and Procedures Documents, 74 Fed. Reg. 34453 (May 30, 2023).

[4] *Id.*

Federal Communications Commission
Washington, D.C. 20554

June 28, 2023

DA 23-554

Content Guru Inc.
900 E. Hamilton Avenue, Suite 510
Campbell, CA 95008
ComplianceManager@redwoodtech.com

John Kabealo
Kabealo PLLC
1629 K Street, NW, Suite 300
Washington, DC 20006
ComplianceManager@redwoodtech.com

Via Certified First-Class Mail – Return Receipt Requested and E-mail

Re: *Response Required – Potential Dismissal of International Section 214 Application Filed by Content Guru Inc., File No. ITC-214-20220714-00082*

Dear Mr. Kabealo:

On June 14, 2022, Content Guru Inc. (Content Guru) filed the above referenced application with the Federal Communications Commission (Commission) to obtain an international section 214 authorization.[1] On August 29, 2022, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Service Sector (Committee) notified the Commission that it was reviewing Content Guru's application for any national security or law enforcement concerns.[2]

On June 7, 2023, the Committee returned the application to the Commission, recommending the application be dismissed without prejudice.[3] The Committee states that Content Guru has failed to respond to a request for information. According to the Committee, it granted Content Guru three extensions to provide the information and warned Content Guru that no further extension would be granted if Content Guru failed to meet its last deadline of June 6, 2023.[4] The Committee states that the

[1] Application of Content Guru Inc. for International Section 214 Authorization, File No. ITC-214-20220714-00082 (filed June 14, 2022).

[2] *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice, Report No. TEL-02213NS at 1 (IB Sept. 1, 2022).

[3] *See* Letter from Christine M. Quinn, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Federal Communications Commission at 1 (June 7, 2023) (on file in ITC-214-20220714-00082) (June 7, 2023 DoJ Letter).

[4] *Id* at n.1. The Committee notified the Commission of these three extensions of the 120-day period by letters dated May 9, 2023, May 24, 2023, and May 31, 2023. *See* Letter from Christine M. Quinn, Attorney Advisor, Foreign Investment Review Section, National Security Division U.S. Department of Justice, to Marlene H. Dortch, Federal Communications Commission at 1 (May 9, 2023) (on file at ITC-214-20220714-00082) (May 9, 2023 DoJ Letter); Letter from Christine M. Quinn, Attorney Advisor, Foreign Investment Review Section, National Security Division,

applicant missed the June 6, 2023, deadline.[5] According to the Committee, it cannot complete its review of the application and has returned the application to the Commission with a recommendation it be dismissed without prejudice.[6]

The Committee's recommendation regarding the national security and law enforcement concerns with an application with foreign ownership is an important consideration in the Commission's determination of whether the grant of an application is in the public interest.[7] If the Committee is unable to make a recommendation because the applicant does not provide the required information to the Committee, the Commission will not have the information it needs to find that the grant of the application is in the public interest.

Content Guru must respond to this letter by **July 28, 2023**. In your letter, state whether you intend to pursue the application and if so, indicate when you will provide the Committee with the information it has requested. If you do not respond to this letter, the above referenced application will be dismissed without prejudice pursuant to the Commission's rules.[8]

Should you need further assistance, please contact Svantje Swider at (202) 418-0772 or svantje.swider@fcc.gov.

Sincerely,

/s/Francis Gutierrez
Francis Gutierrez, Deputy Chief
Telecommunications & Analysis Division
Office of International Affairs

Enclosures: June 7, 2023 DoJ Letter
May 31, 2023 DoJ Letter
May 24, 2023 DoJ Letter
May 9, 2023 DoJ Letter

U.S. Department of Justice, to Marlene H. Dortch, Federal Communications Commission at 1 (May 24, 2023) (on file at ITC-214-20220714-00082) (May 24, 2023 DoJ Letter); Letter from Christine M. Quinn, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Federal Communications Commission at 1 (May 31, 2023) (on file at ITC-214-20220714-00082) (May 31, 2023 DoJ Letter).

[5] June 7, 2023 DoJ Letter at 1.

[6] *Id*.

[7] *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).

[8] 47 CFR §§ 1.748(a) and 1.10014(b). Any filing must be filed in ICFS using the ICFS Pleadings and Comments module.

Enclosures

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

June 7, 2023

By E-File

Ms. Marlene H. Dortch
Federal Communications Commission
45 L St. N.E.
Washington, D.C. 20554

Re: Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Dear Ms. Dortch:

The Commission is notified that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Committee") recommends that the above-referenced application be dismissed without prejudice.[1]

The Committee makes this recommendation under subsection 5(d) of Executive Order 13913 (Apr. 4, 2020) ("E.O. 13913") because of Content Guru's failure to respond to a request for information. The Committee previously granted Content Guru three extensions to provide this information under subsection 5(d) of E.O. 13913[2] and warned Content Guru that no further extension would be granted if Content Guru failed to meet its last deadline of June 6, 2023. Content Guru missed that deadline and has not to date provided the requested information. Accordingly, the Committee cannot complete its review and is returning this application to the FCC with a recommendation it be dismissed without prejudice.

Thank you for your consideration,

Sincerely,

/s/
Christine M. Quinn
Attorney Advisor
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

[1] *See* attached notification of the Chair.
[2] The Commission was notified of these three extensions of the 120-day period by letters filed by the Committee on May 9, 2023, May 24, 2023, and May 31, 2023.

cc: FCC-TTelecom@fcc.gov
David Krech (via e-mail at David.Krech@fcc.gov)
Adrienne McNeil (via e-mail at Adrienne.McNeil@fcc.gov)
Applications.TT@usdoj.gov
osd.pentagon.ousd-a-s.list.team-telecom@mail.mil
dhsteamtelecom@hq.dhs.gov

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Pursuant to Executive Order 13913 (Apr. 4, 2020), the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Committee") is making a notification that the Committee recommends that the above-referenced application be dismissed without prejudice.

Devin A. DeBacker
Chief
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

May 31, 2023

By E-File

Ms. Marlene H. Dortch
Federal Communications Commission
45 L St. N.E.
Washington, D.C. 20554

Re: Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Dear Ms. Dortch:

The Commission is notified that the applicant for the above-referenced application has requested and received an extension of time to provide complete responses to questions posed by the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.[1] The 120-day review period now ends on July 28, 2023.

Thank you for your consideration.

Sincerely,

_____/s/_____
Christine M. Quinn
Attorney Advisor
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

cc: FCC-TTelecom@fcc.gov
David Krech (via e-mail at david.krech@fcc.gov)
Adrienne McNeil (via e-mail at Adrienne.McNeil@fcc.gov)
Applications.TT@usdoj.gov
IP-FCC@HQ.DHS.GOV
osd.pentagon.ousd-a-s.list.team-telecom@mail.mil

[1] *See* attached notification of the Chair.

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Pursuant to Executive Order 13913 (Apr. 4, 2020), the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Committee") is making a notification that the Committee has granted a request by the applicant(s) in the above-referenced application for an extension of time to submit responses to the Committee's questions.

Digitally signed by DEVIN DEBACKER
Date: 2023.05.31 09:34:04 -04'00'

Devin A. DeBacker
Chief
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

May 24, 2023

By E-File

Ms. Marlene H. Dortch
Federal Communications Commission
45 L St. N.E.
Washington, D.C. 20554

Re: Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Dear Ms. Dortch:

The Commission is notified that the applicant for the above-referenced application has requested and received an extension of time to provide complete responses to questions posed by the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.[1] The 120-day review period now ends on July 17, 2023.

Thank you for your consideration.

Sincerely,

/s/
Christine M. Quinn
Attorney Advisor
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

cc: FCC-TTelecom@fcc.gov
David Krech (via e-mail at david.krech@fcc.gov)
Adrienne McNeil (via e-mail at Adrienne.McNeil@fcc.gov)
Applications.TT@usdoj.gov
IP-FCC@HQ.DHS.GOV
osd.pentagon.ousd-a-s.list.team-telecom@mail.mil

[1] *See* attached notification of the Chair.

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Pursuant to Executive Order 13913 (Apr. 4, 2020), the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Committee") is making a notification that the Committee has granted a request by the applicant(s) in the above-referenced application for an extension of time to submit responses to the Committee's questions.

Digitally signed by DEVIN DEBACKER
Date: 2023.05.24 14:51:02 -04'00'

Devin A. DeBacker
Chief
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

May 9, 2023

By E-File

Ms. Marlene H. Dortch
Federal Communications Commission
45 L St. N.E.
Washington, D.C. 20554

Re: Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Dear Ms. Dortch:

The Commission is notified that the applicant for the above-referenced application has requested and received an extension of time to provide complete responses to questions posed by the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.[1] The 120-day review period now ends on July 14, 2023.

Thank you for your consideration.

Sincerely,

_____/s/_____
Christine M. Quinn
Attorney Advisor
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

cc: FCC-TTelecom@fcc.gov
David Krech (via e-mail at david.krech@fcc.gov)
Adrienne McNeil (via e-mail at Adrienne.McNeil@fcc.gov)
Applications.TT@usdoj.gov
IP-FCC@HQ.DHS.GOV
osd.pentagon.ousd-a-s.list.team-telecom@mail.mil

[1] *See* attached notification of the Chair.

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

Content Guru Inc.; ITC-214-20220714-00082 (TT 22-042)

Pursuant to Executive Order 13913 (Apr. 4, 2020), the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Committee") is making a notification that the Committee has granted a request by the applicant(s) in the above-referenced application for an extension of time to submit responses to the Committee's questions.

Digitally signed by DEVIN DEBACKER
Date: 2023.05.09 17:12:47 -04'00'

Devin A. DeBacker
Chief
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

Federal Communications Commission
Washington, D.C. 20554

June 27, 2023

DA 23-555

Steve Dorsey
Mark Marinelli
E−MARCONI LLC
129 Marlborough Street
Boston, MA 02116
sdorsey@e-marconi.com
mmarinelli@e-marconi.com

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Re: International Signaling Point Code Application, File No. SPC-NEW-20221011-00006

Dear Messrs. Dorsey and Marinelli:

This letter responds to the above-referenced application filed by E-MARCONI LLC (E-Marconi) on September 22, 2022. On June 13, 2023, E-Marconi provided supplemental information for the record. In your application, you requested one International Signaling Point Code (ISPC) assignment intended for use on the U.S.-based Signaling System No. 7 networks in Johnstown, Ohio.

Per the guidelines of ITU-T Recommendation Q.708, the ISPC is: (1) to be used for international signaling points for Signaling System No. 7 networks; (2) intended to be processed within the Message Transfer Part of each signaling point or signaling transfer point so that there is no direct relationship to the telephone, data, or Integrated Services Digital Network (ISDN) numbering; and (3) assigned only to existing signaling points in the United States, which belong to international signaling networks, or those planned to begin service not more than 12 months in the future.[1] All requests for ISPC assignments are limited to those that strictly fit the guidelines.[2] "Warehousing" of ISPC assignments must be avoided, and we note that no discernable benefit accrues from block assignments of sequential ISPCs to a particular ISPC requester.

Based on our review of your applications, your request appears to be in accordance with the ITU-T guidelines. Accordingly, as of the date of this letter, we are provisionally assigning to E-Marconi the following ISPC for utilization at the U.S. signaling points indicated in your application:

SPC-NEW-20221011-00006 3-027-3 (Johnstown, OH)

We will notify the ITU-T Secretariat that E-Marconi has been provisionally assigned code 3-027-3 for use in Johnstown, OH.

[1] International Telecommunication Union, ITU-T Recommendation Q.708 (03/99), Series Q: Switching and Signalling, Specifications of Signalling System No. 7 – Message Transfer Part (MTP), Assignment procedures for international signalling point codes, https://www.itu.int/rec/recommendation.asp?lang=en&parent=T-REC-Q.708-199903-I (ITU-T Recommendation Q.708) at 1-5.

[2] *See* ITU-T Recommendation Q.708.

E-Marconi must implement the assignment and file a notification in the FCC's International Communications Filing System (ICFS) for the file number referenced in this letter on or before June 27, 2024. ISPC assignments that have been held in excess of 12 months and that have not been implemented must be returned to this Administrator (FCC, Office of International Affairs, Telecommunications and Analysis Division) for reassignment pursuant to the guidelines.[3] Unless we are specifically notified of the actual implementation of the assignment by the due date, we will assume that implementation did not occur, and the assignment will be deemed to have expired, making the code above available for reassignment.

ISPCs are not transferable between signaling point operators.[4] ISPCs cannot be sold, licensed, or traded by the signaling point operators. ISPCs cannot be transferred except in the case of a merger, acquisition, divestiture, or joint venture. E-Marconi must notify this office of any transfer within 30 days of any such transfer by filing a letter in the ICFS file number for the affected ISPC. In the event that E-Marconi changes its name, contact information, or location where an ISPC is located, it must also notify this office of that change within 30 days by filing a letter in the appropriate ICFS file number.

Please address any questions that you may have regarding this assignment or any future ISPC assignments to the address or phone number shown below.

Regards,

/*Stacey Ashton*/
Telecommunications Analyst

Federal Communications Commission
Office of International Affairs, Telecommunications and Analysis Division
Attention: Stacey Ashton
45 L Street, NE
Washington, D.C. 20554
Phone: +1 202 418 2214
Stacey.Ashton@fcc.gov

[3] ITU-T Recommendation Q.708 at 5, para. 9.6, https://www.itu.int/rec/T-REC-Q.708-199903-I/en.

[4] ITU-T Recommendation Q.708 at 6, para. 12, https://www.itu.int/rec/T-REC-Q.708-199903-I/en.

Federal Communications Commission
Washington, D.C. 20554

June 27, 2023

DA 23-556

Justin Tuiasosopo
AST Telecom, LLC d/b/a Bluesky
P.O. Box 478
Pago Pago, AS 96799
jtuiasosopo@blueskypacificgroup.com

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Re: International Signaling Point Code Applications, File Nos. SPC-NEW-20230124-00001 and SPC-NEW-20230323-00002

Dear Mr. Tuiasosopo:

This letter responds to the two above-referenced applications filed by AST Telecom, LLC d/b/a Bluesky (Bluesky) on January 24, 2023 and March 23, 2023. On May 23 and June 13, 2023, Bluesky provided supplemental information for the record for both applications. In your applications, you requested two International Signaling Point Code (ISPC) assignments intended for use on the U.S.-based Signaling System No. 7 networks in Iliili, American Samoa.

Per the guidelines of ITU-T Recommendation Q.708, the ISPCs are: (1) to be used for international signaling points for Signaling System No. 7 networks; (2) intended to be processed within the Message Transfer Part of each signaling point or signaling transfer point so that there is no direct relationship to the telephone, data, or Integrated Services Digital Network (ISDN) numbering; and (3) assigned only to existing signaling points in the United States, which belong to international signaling networks, or those planned to begin service not more than 12 months in the future.[1] All requests for ISPC assignments are limited to those that strictly fit the guidelines.[2] "Warehousing" of ISPC assignments must be avoided, and we note that no discernable benefit accrues from block assignments of sequential ISPCs to a particular ISPC requester.

Based on our review of your applications, your request appears to be in accordance with the ITU-T guidelines. Accordingly, as of the date of this letter we are provisionally assigning to Bluesky the following ISPCs for utilization at the U.S. signaling points indicated in your application:

SPC-NEW-20230124-00001	5-088-1 (Iliili, AS)
SPC-NEW-20230323-00002	5-088-2 (Iliili, AS) (2)

We will notify the ITU-T Secretariat that Bluesky has been provisionally assigned codes 5-088-1 and 5-088-2 for use in Iliili, AS.

[1] International Telecommunication Union, ITU-T Recommendation Q.708 (03/99), Series Q: Switching and Signalling, Specifications of Signalling System No. 7 – Message Transfer Part (MTP), Assignment procedures for international signalling point codes, https://www.itu.int/rec/recommendation.asp?lang=en&parent=T-REC-Q.708-199903-I (ITU-T Recommendation Q.708) at 1-5.

[2] *See* ITU-T Recommendation Q.708.

Bluesky must implement the assignments and file a notification in the FCC's International Communications Filing System (ICFS) for each of the file numbers referenced in this letter on or before June 27, 2024. ISPC assignments that have been held in excess of 12 months and that have not been implemented must be returned to this Administrator (FCC, Office of International Affairs, Telecommunications and Analysis Division) for reassignment pursuant to the guidelines.[3] Unless we are specifically notified of the actual implementation of the assignments by the due date, we will assume that implementation did not occur, and the assignment(s) will be deemed to have expired, making the code(s) above available for reassignment.

ISPCs are not transferable between signaling point operators.[4] These ISPCs cannot be sold, licensed, or traded by the signaling point operators. ISPCs cannot be transferred except in the case of a merger, acquisition, divestiture, or joint venture. Bluesky must notify this office of any transfer within 30 days of any such transfer by filing a letter in the ICFS file number for the affected ISPC(s). In the event that Bluesky changes its name, contact information, or location where an ISPC is located, Bluesky must also notify this office of that change within 30 days by filing a letter in the appropriate ICFS file number.

Please address any questions that you may have regarding these assignments or any future ISPC assignments to the address or phone number shown below.

Regards,

/*Stacey Ashton*/
Telecommunications Analyst

Federal Communications Commission
Office of International Affairs, Telecommunications and Analysis Division
Attention: Stacey Ashton
45 L Street, NE
Washington, D.C. 20554
Phone: +1 202 418 2214
Stacey.Ashton@fcc.gov

cc: Kent Bressie
HWG LLP
1919 M Street, N.W., Suite 800
Washington, DC 20036−3537
kbressie@hwglaw.com

[3] ITU-T Recommendation Q.708 at 5, para. 9.6, https://www.itu.int/rec/T-REC-Q.708-199903-I/en.

[4] ITU-T Recommendation Q.708 at 6, para. 12, https://www.itu.int/rec/T-REC-Q.708-199903-I/en.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-557
Released: June 30, 2023

STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

CC Docket No. 02-6
WC Docket No. 06-122
WC Docket No. 21-93
WC Docket No. 02-60
WC Docket No. 18-213

Pursuant to our procedure for resolving requests for review, requests for waiver, and petitions for reconsideration of decisions related to actions taken by the Universal Service Administrative Company (USAC) that are consistent with precedent (collectively, Requests), the Wireline Competition Bureau (Bureau) grants, dismisses, or denies the following Requests.[1] The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these Requests is 30 days from the release date of this Public Notice.[2]

Schools and Libraries (E-Rate)
CC Docket No. 02-6

Dismissed on Reconsideration[3]

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

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

[3] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers Library et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (*Allan Shivers Library Order*) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

On reconsideration, Lamoille North Modified Unified Union School District raised a new argument that it did not raise in its previous filing. It now argues that COVID-19 was a contributing factor in their staffing issues that led to

(continued….)

David Douglas School District 40, OR, Application No. 201033579, Petition for Reconsideration, CC Docket No. 02-6 (filed May 25, 2023)

Iroquois West School District 10, IL, Application No. 231039386, Petition for Reconsideration, CC Docket No. 02-6 (filed May 31, 2023)

Lamoille North Modified Unified Union School District, VT, Application No. 231039424, Petition for Reconsideration, CC Docket No. 02-6 (filed June 1, 2023)

Granted[4]

Granting Applicant Additional Time to Respond[5]

Torat Hayim Hebrew Academy, CA, Application Nos. 171041043, 171041072, 171041082, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

(Continued from previous page)
its application being submitted late. Our rules state that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission. Because the petitioner was aware when it first filed the waiver request with the Commission that the COVID-19 pandemic contributed to the submission of its late appeal, we dismiss the petition because it relies on a known fact that should have been raised earlier. *See* 47 CFR § 1.106(b)(2), (c)(2) (stating that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission, unless it is required in the public interest). As an alternative and independent basis for rejecting this petition, we deny the request on the merits. While we are sympathetic to the arguments raised by the petitioner, we find that COVID-19-related staffing issues that might have contributed to a clerical oversight does not constitute special circumstances required for the Commission to waive the rule and we deny this request for reconsideration. S*ee, 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, 9261-62, para. 13 (2010) (*Academy of Math and Science Order*) (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying waivers of our rules).

[4] 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).

[5] *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School District Order*); *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 1876 (WCB 2014) (*Ben Gamla Palm Beach Order*) (granting applicants' requests for review regarding denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame).

Granting on Reconsideration – Late-Filed FCC Form 471[6]

Goffstown School District, NH, Application No. 231039470, Petition for Reconsideration, CC Docket No. 02-6 (filed June 2, 2023)

Incorrect Service Start Date on FCC Form 486[7]

San Mateo Foster City Elementary School District, CA, Application No. 191029594, Request for Waiver, CC Docket No. 02-6 (filed May 24, 2023, supplemented June 15, 2023)

Late-Filed FCC Form 471 Applications – Filed Within 14 Days of the Close of the Window[8]

Albia Community School District, IA, Application No. 231039176, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Allegany County School District, MD, Application No. 231039154, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Alvarado Independent School District, TX, Application No. 231038888, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Annur Islamic School, NY, Application No. 231038748, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Arlington Independent School District, TX, Application No. 231039153, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Ballinger Independent School District, TX, Application No. 231038891, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

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[6] *See, e.g., Petitions for Reconsideration by Callisburg Independent School District; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 28 FCC Rcd 9459, 9461, para. 5 (WCB 2013) (*Callisburg Independent School District Order*) (granting petition for reconsideration where, upon reconsideration of the record, we do not find that the evidence supports our previous determination); *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).

[7] *See, e.g., Request for Review and/or Waiver by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (WCB 2006) (*Glendale Unified School District Order*); *see also Request for Waiver by Harvey Public Library District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15419 (WCB 2008) (*Harvey Public Library District Order*) (granting waiver requests when the applicants inadvertently listed the wrong service start date on their FCC Forms 486). We also waive section 54.720 of the Commission's rules because the petitioner filed its waiver request within 60 days of discovering the error on the FCC Form 486. *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*).

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

Benton High School District 103, IL, Application No. 231039168, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Brazosport Independent School District, TX, Application Nos. 231039027, 231039029, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Bridgeprep Academy of Greater Miami, FL, Application No. 231038879, Request for Waiver, CC Docket No. 02-6 (filed Apr. 14, 2023)

Catholic High School, LA, Application No. 231028611, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Cedar Ridge Childrens Home & School, Inc., MD, Application No. 221039712, Request for Waiver, CC Docket No. 02-6 (filed Apr. 1, 2022, erratum May 25, 2023)

Cutchogue New Suffolk Free Library, NY, Application No. 231030685, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Diocese of Bridgeport Schools, CT, Application No. 231039108, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Durham County Library System, NC, Application No. 231039124, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Education Service Center Region 11 Consortium, TX, Application Nos. 231039172, 231039004, 231039195, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Education Service Center Region 10 DBA Fiber Network Consortium, TX, Application Nos. 231039117, 231039044, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Education Service Center Region 20 Fiber Consortium, TX, Application No. 231039100, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Elko Institute for Academic Achievement, NV, Application No. 231038895, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2023)

George Junior Republic Union Free School District, NY, Application No. 231038989, Request for Waiver, CC Docket No. 02-6 (filed June 7, 2023)

Grapevine-Colleyville Independent School District, TX, Application Nos. 231038930, 231039152, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2023)

Great Hearts Academies Arizona, AZ, Application Nos. 231038606, 231038637, Request for Waiver, CC Docket No. 02-6 (filed Apr. 6, 2023)

Hillsborough County School District, FL, Application Nos. 231038994, 231039165, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

His House, Inc., FL, Application No. 231031041, Request for Waiver, CC Docket No. 02-6 (filed May 30, 2023)

Jewish Beginnings, Inc., WI, Application No. 231038798, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Livingston Parish Library, LA, Application No. 231039170, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2023)

Mid-Hudson Library, NY, Application No. 231038795, Request for Waiver, CC Docket No. 02-6 (filed Apr. 4, 2023)

Newark Educators Community Charter School, NJ, Application No. 231039133, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

North Branch Area School District, MI, Application No. 231039120, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Northside Charter High School, NY, Application Nos. 231038821, 231038822, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Oceanside Public Library, CA, Application No. 231038633, Request for Waiver, CC Docket No. 02-6 (filed May 26, 2023)

Pflugerville Independent School District, TX, Application No. 231038999, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Plano Independent School District, TX, Application No. 231039003, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Poteet Independent School District, TX, Application Nos. 231038892, 231039210, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2023)

Prairie Hills Unified School District 113, KS, Application No. 231036614, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Rochester City School District, NY, Application No. 231038642, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2023)

Sheldon Independent School District, TX, Application No. 231039105, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Sivells Bend Independent School District, TX, Application No. 231038807, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Suwannee River Regional Library, FL, Application No. 231039129, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Texarkana Independent School District, TX, Application Nos. 231038775, 231038778, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2023)

The New Life Child Development Center, NY, Application No. 231039083, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Tree of Knowledge Learning Academy, FL, Application Nos. 231039036, 231039034, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Tree of Knowledge Learning Academy, FL, Application Nos. 231039038, 231039037, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Tree of Knowledge Learning Academy, NJ, Application Nos. 231039026, 231039030, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Trevor Day School, NY, Application No. 231038774, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Warwick School Department, RI, Application No. 231035397, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Yeshiva Bais Chaya Esther, NY, Application No. 231038750, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

Ministerial and/or Clerical Errors – FRN Omitted from FCC Form 471 Application[9]

Bossier Parish School District, LA, Application No. 211023669, Request for Waiver, CC Docket No. 02-6 (filed Jun. 7, 2023, supplemented Jun. 9, 2023).

Madison School District 321, ID, Application No. 231039537, Request for Waiver, CC Docket No. 02-6 (filed May 21, 2023)

Ministerial and/or Clerical Errors – Invoicing[10]

Plymouth Public Schools, MA, Application No. 201021656, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2023)

St. Helen Elementary School, OH, Application No. 211011090, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2023)

[9] *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521, n.19 (WCB 2008) (*Archer Public Library Order*) (permitting applicant to add a request omitted from its FCC Form 471, but included on its source list). Madison School District 32 did not realize this funding request was omitted until the FY 2023 application filing window had closed. The school then filed FCC Form 471 Application No. 231039537 out-of-window for this funding request. We direct USAC to add this funding request to one of the school's timely-filed FY 2023 FCC Form 471 applications, or treat FCC Form 471 Application No. 231039537 as timely filed.

[10] *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, 2023 WL 345366, *3-4, paras. 7-9 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting waivers where the E-Rate invoice filers entered the wrong billing information or inadvertently requested funding for the wrong funding year). We also waive, to the extend necessary, section 54.720 of the Commission's rules because the petitioners filed their waiver requests within 60 days of discovering or receiving notice of the ministerial or clerical error. *See id*. at *5, para. 12.

Yankton School District 63-3, SD, Application No. 211003347, Request for Waiver, CC Docket No. 02-6 (filed June 3, 2023)

Veeya, LLC (Great Hearts America-Texas), TX, Application No. 211039741, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2023)

Zayo Group, LLC (ESC Region 20 Fiber Consortium), TX, Application No. 211029549, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2023)

Signed Contract Requirement[11]

Laurens County School District 56, SC, Application Nos. 221028725, 221028734, Request for Waiver, CC Docket No. 02-6 (filed Dec. 20, 2022)

Waiver of Appeal Filing Deadline[12]

The Children's Storefront f/k/a Storefront Academy Harlem, NY, Application No. 181005, Request for Waiver and Review, CC Docket No. 02-6 (filed Apr. 11, 2023)

Waiver of Special Construction Service Delivery Deadline[13]

Gallup McKinley County Schools, NM, Application No. 191001103, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2023)

Messmer Catholic Schools, WI, Application No. 201029656, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2023)

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[11] *See, e.g.*, *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15526, 15529-30, para. 7 (WCB 2008) (*Barberton City School District Order*); *Requests for Review and/or Waiver of the Decisions of the Universal Service Administrator by Amphitheater Unified School District 10 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 7536, 7536-37, para. 2 (WCB 2013) (*Amphitheater Unified School District Order*) (granting waivers of the signed contract requirement in instances where applicants misunderstood the program rules and submitted their FCC Form 471 applications before signing a contract).

[12] *See, e.g.*, *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). We make no finding on the underlying issues in this appeal and remand this application back to USAC to make a determination on the merits.

[13] *See, e.g.*, *Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018) (*Grants/Cibola County School District Order*) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures).

We find that 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 6.

Denied

Late-Filed FCC Form 471 Applications[14]

Antioch District Library, IL, Application No. 231039569, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2023)

Butte Valley Unified School District, CA, Application No. 231039547, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2023)

Cedarville Public School District, AR, Application No. 231039553, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2023)

Charleston Collegiate School, SC, Application No. 231039536, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2023, supplemented May 25, 2023)

City of Columbia Heights Public Library, MN, Application No. 231039567, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2023)

Cotopaxi School District RE-3, CO, Application No. 231039532, Request for Waiver, CC Docket No. 02-6 (filed May 31, 2023)

Culbertson Public Library, NE, Application No. 231027838, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Diocese of Orlando Office of Catholic Schools, FL, Application No. 231039562, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2023)

Dunkerton Public Library, IA, Application No. 231039564, Request for Waiver, CC Docket No. 02-6 (filed May 26, 2023)

Education Service Center Region 10 DBA Fiber Network Consortium, TX, Application No. 231039421, Request for Waiver, CC Docket No. 02-6 (filed May 29, 2023)

Estancia Valley Classical Academy, NM, Application No. 231039356, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2023)

Evolution Academy Charter School, TX, Application No. 231039497, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

Germantown School District, WI, Application No. 231039541, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2023)

Guthrie Center Community School District, IA, Application No. 231039238, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Islamic Academy of Youngstown, OH, Application Nos. 231039528, 231039535, Request for Waiver, CC Docket No. 02-6 (filed May 17, 2023)

[14] *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).

Mapleton Public School, ND, Application Nos. 231039274, 231039273, Request for Waiver, CC Docket No. 02-6 (filed May 30, 2023)

Morehouse Parish School District, LA, Application No. 231039568, Request for Waiver, CC Docket No. 02-6 (filed May 30, 2023)

North Star Charter School, ID, Application No. 231039486, Request for Waiver, CC Docket No. 02-6 (filed May 19, 2023)

ORION E-Rate Consortium, TX, Application No. 231039296, Request for Waiver, CC Docket No. 02-6 (filed May 26, 2023)

Osnaburg Local School District, OH, Application No. 231039566, Request for Waiver, CC Docket No. 02-6 (filed May 30, 2023)

Phoenix International Academy, AZ, Application No. 231039519, Request for Waiver, CC Docket No. 02-6 (filed May 15, 2023)

Rock County Christian School, WI, Application Nos. 231039146, 231039132, Request for Waiver, CC Docket No. 02-6 (filed June 2, 2023)

Savannah□Chatham County Public School System, GA, Application No. 231039557, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2023)

St. George Elementary School, MO, Application No. 231038735, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2023)

St. James Lutheran School, IL, Application No. 231039552, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2023)

Sweetser, ME, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2022)[15]

The School Board of Marion County, FL, Application No. 231039008, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2023)

Youth Co-Op, FL, Application No. 231039363, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2023)

[15] We also note that Sweetser appears to be requesting a waiver of the Funding Year 2021 application filing window as per USAC's Open Data, the applicant submitted FCC Form 471 applications for funding years 2018, 2019, 2020, 2022, and 2023. However, there does not appear to be an application submitted for FY 2021.

Late-Filed Invoice or Invoice Deadline Extension[16]

ASPIRA, Inc. of Pennsylvania, PA, Application No. 211020129, Request for Waiver, CC Docket No. 02-6 (filed Feb. 28, 2023)

CherryRoad Technologies Inc. (Springfield School District), MA, Application No. 191019700, Request for Waiver, CC Docket No. 02-6 (filed Sept. 16, 2021)

Mount Carmel High School, IL, Application No. 211035506, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2023)

New Mexico State Library, NM, Application No. 201009322, Request for Waiver, CC Docket No. 02-6 (filed May 30, 2023)

Special Education Service Agency, AK, Application No. 211017874, Request for Waiver, CC Docket No. 02-6 (filed May 23, 2023)

Wecom (Topock Elementary School District 12 and Painted Desert Demonstration), AZ, Application Nos. 191009258, 191012365, Request for Waiver, CC Docket No 02-6 (filed July 25, 2022)

Untimely Filed Appeals or Waiver Requests[17]

Autauga-Prattville Public Library, AL, Application No. 191033544, Request for Waiver, CC Docket No. 02-6 (filed Dec. 12, 2022)[18]

Dayton Cincinnati Technology Services LLC (Estill County School District), OH, Application No. 221029143, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2023)

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[16] 47 CFR § 54.514. *See also, e.g., Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016) (*Ada School District Order*) (denying requests for waiver of the Commission's invoice filing deadline rule for petitioners that failed to demonstrate extraordinary circumstances justifying a waiver); *see also Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8966, para. 240 (2014) (*First 2014 E-Rate Order*) (establishing that it is generally not in the public interest to waive the Commission's invoicing rules absent extraordinary circumstances).

[17] *See, e.g.*, *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010) (*Agra Public Schools Order*); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823, para. 1 (WCB 2014) (*Bound Brook School District Order*) (denying requests for review and/or waiver on the grounds that the petitioners failed to (1) submit their appeals either to the Commission or to USAC within 60 days or failed to submit their waiver requests to the Commission within 60 days as required by the Commission's rules; and (2) did not demonstrate special circumstances required for the Commission to waive the rule).

[18] Autauga-Prattville Public Library is appealing a decision by USAC to deny its appeal because it was filed more than 60 days after the issuance of an adverse FCC Form 472 (BEAR) Notification Letter. We also note that the library did not file an appeal at all the FCC Form 486 Notification Letter which was the eventual cause of the BEAR form denial.

San Perlita Independent School District, TX, Application No. 211015554, Request for Waiver, CC Docket No. 02-6 (filed June 2, 2023)

Contribution Methodology
WC Docket No. 06-122

Grant

Request for Waiver of the FCC Form 499-A Revision Deadline[19]

RTK Media Inc., Petition for Waiver, WC Docket No. 06-122 (filed Nov. 25, 2022)

Denied

Request for Waiver of Form 499 Late Filing Fees, Interest, and Penalties[20]

Quorum Technologies, Inc., Letter of Appeal, WC Docket No. 06-122 (filed May 25, 2022)

Northwest Digits, LLC, Petition for Waiver, WC Docket No. 06-122 (filed May 25, 2022)

Emergency Connectivity Fund
WC Docket No. 21-93

Granted[21]

Early Delivery[22]

Kent School District, WA, Application No. ECF202207638, Request for Waiver, WC Docket No. 21-93 (filed May 24, 2023)

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[19] *See, e.g., Universal Service Contribution Methodology, Request for Waiver by Experior Networks; Request for Review by Coaxial Cable Television Corporation of Decision of Universal Service Administrator*, WC Docket No. 06-122, Order, 30 FCC Rcd 4711 (WCB 2015) (granting requests to waive the FCC Form 499-A revision deadline where petitioners would have owed no contributions at all if they had filed correctly).

[20] 47 CFR § 54.713. *See, e.g*., *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (WCB 2010) (denying deadline waivers where claims of good cause amount to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control); *Universal Service Contribution Methodology; Requests for Review of Decisions of the Universal Service Administrator by Achilles Networks, Inc., et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 4646, 4648-49, paras. 5, 8 (WCB 2010) (finding that good cause is not shown when filers claim they were unaware of their obligation to file the forms, ignorant of the process for electronically filing the forms, or had otherwise failed to file the forms); *Federal-State Joint Board on Universal Service, Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783 (WCB 2007) (finding that good cause is not shown when filer claimed it did not have skilled personnel to interpret and correctly apply the FCC Form 499 instructions). To the extent filers' financial situation makes it difficult to pay the invoice in full, they may set up a payment plan with USAC to satisfy the obligation. *See* https://www.usac.org/service-providers/making-payments/how-to-pay/payment-plans/.

[21] *See supra* note 6.

[22] *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)..

Kettle Falls School District 212, WA, Application No. ECF202201484, Request for Waiver, WC Docket No. 21-93 (filed June 8, 2023)

Rogers Public School District 30, AR, Application No. ECF202206262, Request for Waiver, WC Docket No. 21-93 (filed June 7, 2023)

Granting Additional Time to Respond to USAC's Request for Information[23]

Head Start Program of Morris County, NJ, Application Nos. ECF202106684, ECF202206090, Request for Review and/or Waiver, WC Docket No. 21-93 (filed May 11, 2023)

Late-Filed FCC Form 471 Applications – Circumstances Beyond Applicant's Control[24]

Westfield Public Library, IN, Application No. ECF202209946, Request for Waiver, WC Docket No. 21-93 (filed Aug. 8, 2022)[25]

Ministerial and/or Clerical Errors[26]

East Brunswick Public School District, NJ, Application No. ECF222118743, Request for Review, WC Docket No. 21-93 (filed Feb. 3, 2023)

[23] *See, e.g.*, *Alpaugh Unified School District Order*, 22 FCC Rcd at 6035 *Ben Gamla Palm Beach Order*, 29 FCC Rcd at 1876 (granting requests for review for applicants that had been denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame). 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.

[24] *See, e.g., Requests for Waiver of Decisions of the Universal Service Administrator by Academy for Academic Excellence et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4748-49, para. 4 (WCB 2007) (*Academy for Academic Excellence Order*) (granting waivers where the applicants filed after the close of the filing window due to delays beyond its control, in particular, technical problems with USAC's electronic filing system). 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.

[25] Although we are granting this waiver, we remind the applicant that the review and processing of their application is subject to the prioritization rules set forth in section 54.1708(c) of the Commission's rules. USAC and the Commission are required to ensure those with the greatest need are funded first because not all third window ECF FCC Form 471 applications will be able to be funded because demand during this window exceeded the amount of available funds. *See* 47 CFR § 54.1708(c).

[26] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17320-21, para. 2, n.23 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting a waiver when applicant mistakenly provided the wrong documentation concerning a purchase). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules.

North Haven Memorial Library, CT, Application No. ECF202101178, Request for Review, WC Docket No. 21-93 (filed June 3, 2023)

Stigler Independent School District 20, OK, Application No. ECF202202917, Request for Review, WC Docket No. 21-93 (filed Dec. 12, 2022)

Payment Verification[27]

Academia Adventista Del Noroeste, PR, Application No. ECF202115330, Request for Review and/or Waiver, WC Docket No. 21-93 (filed June 8, 2023)

Waiver of Appeal Filing Deadline[28]

Bridges Preparatory Academy Charter School, CA, Application No. ECF202208306, Request for Waiver, WC Docket No. 21-93 (filed May 23, 2023)

[27] *See, e.g.*, *Request for Review of a Decision of the Universal Service Administrator by Youthbuild Columbus Community School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 337, 339, paras. 5-6 (WCB 2011) (granting an appeal of a commitment adjustment action where applicant provided evidence of payment of non-discount share on appeal). Consistent with precedent, we also find good cause exists to waive section 54.1718(b)(1) of the Commission's rules, which requires petitioners to file their appeals within 30 days of an adverse USAC decision, because the applicant filed its request within a reasonable period of time of receiving actual notice, there was no actual violation of program rules, and this is an emergency program. *See, e.g., ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (waiving the filing deadline for petitioners that submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision); *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.

[28] *See, e.g., ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (granting waivers of filing deadline for appeals because they 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). 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 establishing the appeal filing deadline. *See* 47 CFR § 54.1718. We note that the Commission adopted a shortened appeal timeframe of 30 days in the Emergency Connectivity Fund Program due to the short-term, emergent nature of the program. *See id.*; *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8740, 8746, paras. 90, 107 (2021) (*Emergency Connectivity Fund Report and Order*). We make no finding on the underlying issues in these appeals and remand these applications back to USAC to make a determination on the merits. *See supra* note 6.

Waiver of Appeal Filing Deadline – USAC Error Resulted in Late-Filed Appeal[29]

Greenbrier County School District, WV, Application No. ECF202110948, Request for Waiver, WC Docket No. 21-93 (filed Nov. 13, 2022)

Waiver of Service Delivery Date[30]

Yakama Nation Library, WA, Application No. ECF222121175, Request for Waiver, WC Docket No. 21-93 (filed May 31, 2023)

Waiver of Special Construction Service Delivery Date[31]

Clint Independent School District, TX, Application No. ECF202114954, Request for Waiver, CC Docket No. 02-6 (filed May 30, 2023)

[29] *See, e.g., Requests for Review and/or Requests for Waiver of Decisions of the Universal Service Administrator by Animas School District 6 et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16905, para. 4 (WCB 2011) (granting petitioners waivers of our filing deadline for appeals because their late-filed appeal would never have been necessary absent an error on the part of USAC). 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.

[30] *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, 13652-53, para. 2 (WCB 2014) (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 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 June 30, 2024, 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 recurring services funding requests from the first and second application filing window to June 30, 2024). We also waive any associated administrative or procedural deadlines that might be necessary to effectuate our ruling. *See supra* note 6. 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.

[31] *See, e.g., Grants/Cibola County School District Order*, 33 FCC Rcd at 10051, para. 8 (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 waive the network construction service delivery deadline and direct USAC to set a new service delivery deadline of June 30, 2024, and adjust any associated administrative or procedural deadlines, including the invoice deadline, that might be necessary to effectuate our ruling. We also waive any associated administrative or procedural deadlines that might be necessary to effectuate our ruling. *See supra* note 6. 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.

Denied

Untimely Filed Appeals or Waiver Requests[32]

Hoosic Valley Central School District, NY, Application No. ECF202114830, Request for Waiver, WC Docket No. 21-93 (filed Feb. 8, 2023)

Pequenos Giant Academy Child Care Center, IL, Application No. ECF202204097, Request for Waiver, CC Docket No. 02-6 (filed Jan. 9, 2023)

Rural Health Care Program
WC Docket No. 02-60

Dismiss as Moot[33]

GCI Communication Corp. (Ketchikan Indian Community Tribal Health Clinic), AK, Request for Review and/or Waiver, WC Docket No. 02-60, Funding Request No. 1715401 (filed May 17, 2021)

GCI Communication Corp. (Multiple Health Care Providers), AK, Request for Review and/or Waiver, WC Docket No. 02-60, Multiple Funding Request Numbers (filed July 12, 2019)

GCI Communication Corp. (Multiple Health Care Providers), AK, Request for Review and/or Waiver, WC Docket No. 02-60, Multiple Funding Request Numbers (filed Nov. 15, 2019)

GCI Communication Corp. (Multiple Health Care Providers), AK, Request for Review and/or Waiver, WC Docket No. 02-60, Multiple Funding Request Numbers (filed Apr. 20, 2020)

[32] *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 60 days; or failed to submit their waiver requests to the Commission within 60 days as required by the Commission's rules; and (2) did not show special circumstances necessary for the Commission to waive the deadline). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules. We note that the Commission adopted a shortened waiver and appeal timeframe of 30 days in the Emergency Connectivity Fund Program due to the short-term, emergent nature of the program. *See* 47 CFR 54.1718; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740, 8746, paras. 90, 107. As such, requests for waiver of Emergency Connectivity Fund Program rules that are filed more than 30 days after a deadline or decision will be denied.

[33] *See, e.g., Requests for Review of Decision of the Universal Service Administrator by Integrity Communications (Brooks Consolidated Independent School District) et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 7994, 7995, para. 1 (WCB 2012) (dismissing appeals as moot where the petitioner subsequently withdrew its funding requests). Pursuant to its Consent Decree with the Enforcement Bureau, GCI Communication Corp. (GCI), withdrew these dismissed appeals. *See In the Matter of GCI Communication Corp.*, File No. EB-IHD-19-00028792, Order and Consent Decree, DA 23-380, Appx. B (EB rel. May 10, 2023) (requiring GCI's withdrawal of certain pending appeals) (*GCI Consent Decree*). *See also* Letter from Jennifer P. Bagg, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-60, WC Docket No. 17-310 (May 31, 2023) (requesting the withdrawal of the appeals listed in Appendix B of the *GCI Consent Decree*).

GCI Communication Corp. (Multiple Health Care Providers), AK, Request for Review and/or Waiver, WC Docket No. 02-60, Multiple Funding Request Numbers (filed Nov. 23, 2021)

Granted

Rural Rates[34]

GCI Communication Corp., AK, Request for Review and Waiver, WC Docket No. 02-60, Funding Request No. 2080223 (filed Sept. 16, 2021)

Waiver of Appeal Deadline

GCI Communication Corp. (Multiple Health Care Providers), AK, Request for Review and Waiver, WC Docket No. 02-60, Funding Request Nos. 2081508, 2079355, 2081368, 2081369, 2081385, 2081180, 2081179, 2081518, 2081502, 2081382, 2081384, 2081527, 2081176, 2081266, 2081277, 2081354, 2081375, 2081379 (filed May 5, 2022)[35]

GCI Communication Corp. (Ketchikan Indian Community Tribal Health Clinic), AK, Request for Review and Waiver, WC Docket No. 02-60, Funding Request No. 20777411 (filed March 22, 2022)[36]

Waiver of Invoice Filing Deadline—Sua Sponte Waiver[37]

[34] *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7343, n.40 (2019) (*Promoting Telehealth Report and Order*) (permitting the use of rural rates approved under an evergreen contract entered into or extended before the adoption of the Report and Order). Additionally, we grant GCI's request for review and instruct USAC to allow GCI to use the previously approved rate for FRN 2080223 as justified under footnote 40 of the *Promoting Telehealth Report and Order*. According to the documents GCI provided, the evergreen contract supporting the funding request at issue in this appeal was executed in 2016, prior to the *Promoting Telehealth Report and Order* and is therefore permitted to use a previously approved rate for funding year 2020. We also grant a waiver of the deadline to file this Request for Review because the COVID-19 pandemic impacted the petitioner's ability to file its appeal. *See Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7063, para. 32 (WCB 2021) (*2021 COVID-19 RHC Relief Order*) (declining to automatically extend deadlines for all appeals and waiver requests, but noting that "[a] petitioner may seek a waiver of the deadline to file an appeal or waiver request if it reasonably attempted to meet the deadline but was unable to do so due to the COVID-19 pandemic and it filed within a reasonable amount of time after the deadline.").

[35] *See ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (granting requests for waiver of the deadline to file an appeal when the petitioners filed their appeals within a reasonable time after receiving actual notice of USAC's adverse decision). We remand these applications to USAC to determine whether the rural rates for the period covered by the contract extension comport with program rules and direct USAC to conduct outreach to GCI on this question.

[36] *See Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7063, para. 32 (WCB 2021) (2021 COVID-19 RHC Relief Order) (noting that "[a] petitioner may seek a waiver of the deadline to file an appeal or waiver request if it reasonably attempted to meet the deadline but was unable to do so due to the COVID-19 pandemic and it filed within a reasonable amount of time after the deadline."). We grant GCI's request to waive the 60-day appeal deadline because it faced unprecedented challenges caused by the COVID-19 pandemic, including operational and personnel changes, during the period before the appeal deadline. We remand these applications to USAC to determine whether the rural rates for the period covered by the contract extension comport with program rules and direct USAC to conduct outreach to GCI on this question.

Tennessee Telehealth Consortium, TN, *Sua Sponte* Waiver, WC Docket No. 02-60, Funding Request No. 18255251

Kentucky Telehealth Consortium, KY, *Sua Sponte* Waiver, WC Docket No. 02-60, Funding Request No. 19642411

Waiver of Service Provider Identification Number Change Deadline[38]

Alice Hyde Medical Center, NY, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 21976141, 21976161, 21976151, 21976181, 21976121, 21976171 (filed Apr. 13, 2023)

Bootheel Counseling Services, MO, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21158071 (filed Feb. 3, 2023)

Connected Care Pilot Program
WC Docket No. 18-213

Granted

Invoice Deadline[39]

Banyan Health System, FL, Request for Waiver, WC Docket No. 18-213, Funding Request No. 21230511 (filed Apr. 24, 2023)

(Continued from previous page)

[37] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 1986, 1994 (WCB 2020) (*Funding Year 2018 Invoice Waiver Order*); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 32 FCC Rcd 5065, 5065-66, paras. 2, 4 (WCB 2017) (*Funding Year 2016 Invoice Waiver Order*) (granting a waiver *sua sponte* of the invoice filing deadline when the deadline had already passed at the time that health care providers received USAC's decision, which made compliance with program rules impossible). We waive the petitioner's invoice filing deadline and allow it 180 days from the later of the release of this Public Notice or the issuance of a Funding Commitment Letter to file invoices with USAC.

[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).

[39] Banyan Health Systems received an incorrect service delivery deadline for the funding request at issue in this appeal, resulting in an incorrect invoice deadline because the invoice deadline in the Connected Care Pilot Program is set as 120 days from the service delivery deadline. *See Promoting Telehealth for Low-Income Consumers*, WC Docket 18-213, Second Report and Order, 36 FCC Rcd 10642, 10658-59, para. 34 (2021) (stating that the invoice deadline shall be 120 days from the service delivery deadline). The service delivery deadline for Connected Care Pilot Program is three years from the first date of service for the respective Pilot Project, and by no later than June 30, 2025. *See id.*, at 10656, para. 28 (stating that all funding commitments shall end three years from the first date of service for the respective Pilot project, and by no later than June 30, 2025). Since Banyan's project started on July 1, 2022, the service delivery deadline for funding requests for Banyan's Pilot project is June 30, 2025, and its invoice deadline is Oct. 28, 2025.

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
45 L St., N.E.
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DA 23-558
Released: June 27, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF ATLANTA DATACOM, INC., D/B/A ADCOM SOLUTIONS TO APPDIRECT, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-175

Comments Due: July 11, 2023
Reply Comment Due: July 18, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Atlanta Datacom, Inc. d/b/a ADCom Solutions (ADCom), George F. Johnson Jr. and William B. Johnson (Transferors), AppDirect, Inc. (AppDirect) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of ADCom, from Transferors to AppDirect.[2]

ADCom, a Georgia corporation, provides resold competitive interstate services in multiple states. ADCom states it provides a variety of managed and carrier services to its enterprise customers. George F. Johnson Jr. and William B. Johnson, both residents of the state of Georgia, are the record and beneficial owners of all of the issued and outstanding shares of ADCom, with each holding 50% of the Company's shares.

AppDirect, a Delaware corporation, provides business-to-business cloud marketplace and cloud management services across the United States. AppDirect does not hold any Commission authorizations or licenses. AppDirect's wholly-owned subsidiary, AppSmart TGN, Inc., provides resold telecommunications services. Applicants state that the following individuals and entities will ultimately hold a ten percent or greater interest in AppDirect: Ajay Gopal Royan (Canadian Citizen); Daniel Saks (Canadian Citizen); Nicholas Desmarais (Canadian Citizen); Paul Desmarais Jr. (Canadian Citizen); and Trident Nominees (I. OM) Limited (Isle of Man entity). Applicants

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

[2] Applicants filed supplements to the application on June 15, 2023 and June 23, 2023. Letter from Charles A. Hudak, Counsel for George F. Johnson Jr. and William Johnson, and Henry Shi, Counsel for AppDirect, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-175 (filed June15, 2023); Letter from Henry Shi, Counsel for AppDirect, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-175 (filed June 23, 2023).

further state that ADCom will be controlled by its board of directors, which is expected to consist of Nicholas Desmarais and Mark Liu, citizens of Canada and the United States, respectively.

Pursuant to the terms of the stock purchase agreement, AppDirect will purchase 100% of the outstanding shares of ADCom from George F. Johnson Jr. and William B. Johnson. Following the consummation of the proposed transaction, AppDirect will be the direct parent of ADCom.

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity. We accept the application for streamlined filing under section 63.03(b)(2)(i) of the Commission's rules.[3]

> Domestic Section 214 Application Filed for the Transfer of Control of
> Atlanta DataCom, Inc. d/b/a ADCom Solutions,
> From George F. Johnson Jr. and William B. Johnson to AppDirect, Inc.,
> WC Docket No. 23-175 (filed May. 24, 2023).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before July 11, 2023**, and reply comments **on or before July 18, 2023**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.

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

1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a 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

[3] 47 CFR § 63.03(b)(2)(i).

ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[4] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

FCC

[4] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-559
Released: June 28, 2023

PLEADING CYCLE ESTABLISHED FOR COMMENT ON APPLICATION FOR CERTIFICATION FOR THE PROVISION OF TELECOMMUNICATIONS RELAY SERVICE

CG DOCKET NO. 03-123

Comments Due: July 10, 2023
Reply Comments Due: July 17, 2023

Notice is hereby given that the United States territory listed below has applied to the Commission for renewal of certification of its telecommunications relay service (TRS) program, for the five-year period from July 26, 2023 through July 25, 2028.[1] Each state and U.S. territory's application for certification must demonstrate that its TRS program complies with section 225 of the Communications Act[2] and the Commission's rules governing the provision of TRS.[3] This notice seeks public comment on the following U.S. territory application for certification, which can be found on the Commission's website at: https://www.fcc.gov/general/trs-state-and-territories.

File No: TRS-61-22
U.S. Virgin Islands Public Service Commission
U.S. Virgin Islands

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 & 1.419, interested parties may file comments on or before **July 10, 2023**, and reply comments on or before **July 17, 2023**. All filings must reference **CG Docket No. 03-123** and the relevant U.S. territory identification number of the application for which comments are being submitted.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/filings.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

[1] Current U.S. territory TRS certifications expire July 25, 2023.

[2] Section 225 states, in pertinent part, that the Commission may approve a state's application if it determines that the state's program makes available TRS "in a manner that meets or exceeds" the Commission's TRS requirements and "the program makes available adequate procedures and remedies for enforcing the requirements of the State program." 47 U.S.C. §§ 225(f)(2)(A), (B).

[3] 47 CFR §§ 64.601 *et seq.*

- Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.[4]
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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

For further information regarding this *Public Notice*, contact Dana Warrick, Consumer and Governmental Affairs Bureau, Disability Rights Office at: (202) 418-2247 (voice), or e-mail at: Dana.Warrick@fcc.gov.

- FCC -

[4] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closesheadquarters-open-window-and-changes-hand-delivery-policy.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-560
Released: June 28, 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, no section 27.1503(c)(2) anti-windfall payment is due for the licenses listed in the Appendix. Therefore, the Bureau finds that granting the applications for the 900 MHz broadband segment licenses listed in the Appendix serves the public interest, convenience, and necessity.

Accordingly, by this Public Notice, we announce the grant of the licenses listed in the Appendix. We grant these licenses pursuant to section 309(a) of the Communications Act, 47 U.S.C. § 309(a), and sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. These new 900 MHz broadband licensees may begin operation in the applicable counties, subject to 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	0010413496	0023948573	D08035	Douglas County, CO	N/A
PDV Spectrum Holding Company, LLC	0010415774	0023948573	D08019	Clear Creek County, CO	N/A
PDV Spectrum Holding Company, LLC	0010415778	0023948573	D08013	Boulder County, CO	N/A
PDV Spectrum Holding Company, LLC	0010417562	0023948573	D08069	Larimer 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.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-561
Released: June 28, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES COUNTIES WHERE CONDITIONAL FORBEARANCE FROM THE LIFELINE VOICE OBLIGATION APPLIES

WC Docket No. 11-42

By this Public Notice, the Wireline Competition Bureau (Bureau) announces the counties in which conditional forbearance from the obligation to offer Lifeline-supported voice service applies, pursuant to the Commission's *2016 Lifeline Order*.[1] This forbearance applies only to the Lifeline voice obligation of eligible telecommunications carriers (ETCs) that are designated for purposes of receiving both high-cost and Lifeline support (high-cost/Lifeline ETCs), and not to Lifeline-only ETCs.[2] The Appendix lists the counties where the Commission's conditional forbearance from high-cost/Lifeline ETCs' Lifeline voice obligation will apply effective on August 31, 2023.

The *2016 Lifeline Order* established conditional forbearance from Lifeline voice obligations in targeted areas where certain competitive conditions are met.[3] To accomplish this forbearance, the Commission directed the Bureau to release a yearly public notice announcing the counties in which the competitive conditions are met.[4] In particular, the Commission granted forbearance from high-cost/Lifeline ETCs' obligation to offer and advertise Lifeline voice service in counties where the following conditions are met: (1) 51% of Lifeline subscribers in the county are obtaining broadband Internet access service; (2) there are at least three other providers of Lifeline broadband Internet access service that each serve at least 5% of the Lifeline broadband subscribers in that county; and (3) the ETC does not actually receive federal high-cost universal service support.[5]

The counties listed in the Appendix meet the two competitive conditions;[6] and for ETCs that are receiving high-cost support in these counties, the forbearance applies only in areas within the county

[1] *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4082-4093, paras. 335-60 (2016) (*2016 Lifeline Order*).

[2] *Id.* at 4078-79, para. 325.

[3] *Id.* at 4079, para. 326.

[4] *Id.* at 4093, para. 360.

[5] *Id.* at 4082-83, 4090-93, paras. 335, 354-60.

[6] Using National Lifeline Accountability Database and Lifeline Claims System data as of April 2023, approximately 89% of the counties identified in the Appendix were also eligible for this conditional forbearance in 2022. The remaining 11% of the counties newly met both competitive conditions in 2023. There are also 96 counties that are no longer eligible for conditional forbearance because they did not meet the two competitive conditions in 2023. *See Wireline Competition Bureau Announces Counties Where Conditional Forbearance From the Lifeline Voice Obligation Applies*, Public Notice, DA 22-707 (WCB 2022).

where the ETC does not receive high-cost support.[7] We note that this forbearance does not grant relief from the Lifeline voice obligation as to those Lifeline subscribers that the high-cost/Lifeline ETC serves as of the date of this Public Notice.[8] Additionally, this forbearance does not preclude ETCs from electing to provide and receive reimbursement for Lifeline-discounted voice service.[9]

This forbearance will apply in the counties identified in the Appendix of this Public Notice, to the extent that ETCs are not receiving federal high-cost universal service support in those areas, until 60 days after the Bureau issues a Public Notice in 2024 updating the list of counties in which the Commission's conditional forbearance applies.[10]

For further information, please contact Samuel Lewis, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-2659, or at Samuel.Lewis@fcc.gov.

- FCC -

[7] *2016 Lifeline Order* at 4093, para. 359.

[8] *Id.* at 4083, 4085, paras. 335, 340.

[9] *Id.* at 4085, para. 342.

[10] *Id.* at 4093, para. 360.

APPENDIX

Counties and County Equivalents, by State, Where Conditional Forbearance of Lifeline Voice Obligation Applies

STATE	COUNTY
AL	BARBOUR COUNTY
AL	BULLOCK COUNTY
AL	CHAMBERS COUNTY
AL	CLARKE COUNTY
AL	COFFEE COUNTY
AL	COVINGTON COUNTY
AL	DALE COUNTY
AL	DALLAS COUNTY
AL	DEKALB COUNTY
AL	ETOWAH COUNTY
AL	HOUSTON COUNTY
AL	MACON COUNTY
AL	MARENGO COUNTY
AL	PERRY COUNTY
AL	PIKE COUNTY
AL	RANDOLPH COUNTY
AL	ST. CLAIR COUNTY
AL	SUMTER COUNTY
AL	TALLAPOOSA COUNTY
AL	WILCOX COUNTY
AK	COPPER RIVER CENSUS AREA
AK	VALDEZ-CORDOVA CENSUS
AZ	COCHISE COUNTY
AZ	GILA COUNTY
AZ	GRAHAM COUNTY
AZ	GREENLEE COUNTY
AZ	LA PAZ COUNTY
AZ	MARICOPA COUNTY
AZ	MOHAVE COUNTY
AZ	PIMA COUNTY
AZ	PINAL COUNTY
AZ	SANTA CRUZ COUNTY
AZ	YAVAPAI COUNTY
AZ	YUMA COUNTY
AR	ARKANSAS COUNTY
AR	ASHLEY COUNTY
AR	BENTON COUNTY
AR	CALHOUN COUNTY
AR	CARROLL COUNTY
AR	CHICOT COUNTY
AR	CLARK COUNTY
AR	CLAY COUNTY
AR	CLEBURNE COUNTY
AR	CLEVELAND COUNTY
AR	COLUMBIA COUNTY
AR	CONWAY COUNTY
AR	CRAIGHEAD COUNTY
AR	CRAWFORD COUNTY
AR	CRITTENDEN COUNTY
AR	CROSS COUNTY
AR	DALLAS COUNTY
AR	DESHA COUNTY
AR	FAULKNER COUNTY
AR	FRANKLIN COUNTY
AR	GARLAND COUNTY
AR	GRANT COUNTY
AR	GREENE COUNTY
AR	HEMPSTEAD COUNTY
AR	HOT SPRING COUNTY
AR	HOWARD COUNTY

STATE	COUNTY
AR	INDEPENDENCE COUNTY
AR	JACKSON COUNTY
AR	JEFFERSON COUNTY
AR	JOHNSON COUNTY
AR	LAFAYETTE COUNTY
AR	LAWRENCE COUNTY
AR	LEE COUNTY
AR	LINCOLN COUNTY
AR	LITTLE RIVER COUNTY
AR	LOGAN COUNTY
AR	LONOKE COUNTY
AR	MADISON COUNTY
AR	MARION COUNTY
AR	MILLER COUNTY
AR	MISSISSIPPI COUNTY
AR	MONROE COUNTY
AR	NEVADA COUNTY
AR	NEWTON COUNTY
AR	OUACHITA COUNTY
AR	PERRY COUNTY
AR	PHILLIPS COUNTY
AR	PIKE COUNTY
AR	POINSETT COUNTY
AR	POPE COUNTY
AR	PRAIRIE COUNTY
AR	PULASKI COUNTY
AR	RANDOLPH COUNTY
AR	ST. FRANCIS COUNTY
AR	SALINE COUNTY
AR	SEBASTIAN COUNTY
AR	SEVIER COUNTY
AR	UNION COUNTY
AR	VAN BUREN COUNTY
AR	WASHINGTON COUNTY
AR	WHITE COUNTY
AR	WOODRUFF COUNTY
AR	YELL COUNTY
CA	ALAMEDA COUNTY
CA	AMADOR COUNTY
CA	BUTTE COUNTY
CA	CALAVERAS COUNTY
CA	COLUSA COUNTY
CA	CONTRA COSTA COUNTY
CA	DEL NORTE COUNTY
CA	EL DORADO COUNTY
CA	FRESNO COUNTY
CA	GLENN COUNTY
CA	HUMBOLDT COUNTY
CA	IMPERIAL COUNTY
CA	INYO COUNTY
CA	KERN COUNTY
CA	KINGS COUNTY
CA	LAKE COUNTY
CA	LASSEN COUNTY
CA	LOS ANGELES COUNTY
CA	MADERA COUNTY
CA	MARIN COUNTY
CA	MENDOCINO COUNTY
CA	MERCED COUNTY
CA	MODOC COUNTY
CA	MONTEREY COUNTY
CA	NAPA COUNTY
CA	NEVADA COUNTY
CA	ORANGE COUNTY
CA	PLACER COUNTY
CA	RIVERSIDE COUNTY

STATE	COUNTY
CA	SACRAMENTO COUNTY
CA	SAN BENITO COUNTY
CA	SAN BERNARDINO COUNTY
CA	SAN DIEGO COUNTY
CA	SAN FRANCISCO COUNTY
CA	SAN JOAQUIN COUNTY
CA	SAN LUIS OBISPO COUNTY
CA	SAN MATEO COUNTY
CA	SANTA BARBARA COUNTY
CA	SANTA CLARA COUNTY
CA	SANTA CRUZ COUNTY
CA	SHASTA COUNTY
CA	SISKIYOU COUNTY
CA	SOLANO COUNTY
CA	SONOMA COUNTY
CA	STANISLAUS COUNTY
CA	SUTTER COUNTY
CA	TEHAMA COUNTY
CA	TULARE COUNTY
CA	TUOLUMNE COUNTY
CA	VENTURA COUNTY
CA	YOLO COUNTY
CA	YUBA COUNTY
CO	ADAMS COUNTY
CO	ALAMOSA COUNTY
CO	ARAPAHOE COUNTY
CO	ARCHULETA COUNTY
CO	BACA COUNTY
CO	BENT COUNTY
CO	BOULDER COUNTY
CO	BROOMFIELD COUNTY
CO	CHEYENNE COUNTY
CO	CLEAR CREEK COUNTY
CO	CONEJOS COUNTY
CO	COSTILLA COUNTY
CO	CROWLEY COUNTY
CO	CUSTER COUNTY
CO	DELTA COUNTY
CO	DENVER COUNTY
CO	DOLORES COUNTY
CO	DOUGLAS COUNTY
CO	EAGLE COUNTY
CO	ELBERT COUNTY
CO	EL PASO COUNTY
CO	FREMONT COUNTY
CO	GARFIELD COUNTY
CO	GILPIN COUNTY
CO	GRAND COUNTY
CO	GUNNISON COUNTY
CO	HUERFANO COUNTY
CO	JEFFERSON COUNTY
CO	KIOWA COUNTY
CO	KIT CARSON COUNTY
CO	LAKE COUNTY
CO	LA PLATA COUNTY
CO	LARIMER COUNTY
CO	LAS ANIMAS COUNTY
CO	LINCOLN COUNTY
CO	LOGAN COUNTY
CO	MESA COUNTY
CO	MOFFAT COUNTY
CO	MONTEZUMA COUNTY
CO	MONTROSE COUNTY
CO	MORGAN COUNTY
CO	OTERO COUNTY
CO	OURAY COUNTY

STATE	COUNTY
CO	PARK COUNTY
CO	PHILLIPS COUNTY
CO	PITKIN COUNTY
CO	PROWERS COUNTY
CO	PUEBLO COUNTY
CO	RIO GRANDE COUNTY
CO	ROUTT COUNTY
CO	SAGUACHE COUNTY
CO	SEDGWICK COUNTY
CO	SUMMIT COUNTY
CO	TELLER COUNTY
CO	WASHINGTON COUNTY
CO	WELD COUNTY
CO	YUMA COUNTY
CT	MIDDLESEX COUNTY
CT	TOLLAND COUNTY
DC	DISTRICT OF COLUMBIA
FL	BAKER COUNTY
FL	GILCHRIST COUNTY
FL	HAMILTON COUNTY
FL	HOLMES COUNTY
FL	LAFAYETTE COUNTY
FL	NASSAU COUNTY
FL	SUWANNEE COUNTY
FL	UNION COUNTY
GA	APPLING COUNTY
GA	ATKINSON COUNTY
GA	BACON COUNTY
GA	BAKER COUNTY
GA	BALDWIN COUNTY
GA	BANKS COUNTY
GA	BARROW COUNTY
GA	BARTOW COUNTY
GA	BEN HILL COUNTY
GA	BERRIEN COUNTY
GA	BIBB COUNTY
GA	BLECKLEY COUNTY
GA	BRANTLEY COUNTY
GA	BROOKS COUNTY
GA	BRYAN COUNTY
GA	BULLOCH COUNTY
GA	BURKE COUNTY
GA	BUTTS COUNTY
GA	CALHOUN COUNTY
GA	CAMDEN COUNTY
GA	CANDLER COUNTY
GA	CARROLL COUNTY
GA	CATOOSA COUNTY
GA	CHARLTON COUNTY
GA	CHATHAM COUNTY
GA	CHATTAHOOCHEE COUNTY
GA	CHATTOOGA COUNTY
GA	CHEROKEE COUNTY
GA	CLARKE COUNTY
GA	CLAY COUNTY
GA	CLAYTON COUNTY
GA	CLINCH COUNTY
GA	COBB COUNTY
GA	COFFEE COUNTY
GA	COLQUITT COUNTY
GA	COLUMBIA COUNTY
GA	COOK COUNTY
GA	COWETA COUNTY
GA	CRAWFORD COUNTY
GA	CRISP COUNTY
GA	DADE COUNTY

STATE	COUNTY
GA	DAWSON COUNTY
GA	DECATUR COUNTY
GA	DEKALB COUNTY
GA	DODGE COUNTY
GA	DOOLY COUNTY
GA	DOUGHERTY COUNTY
GA	DOUGLAS COUNTY
GA	EARLY COUNTY
GA	ECHOLS COUNTY
GA	EFFINGHAM COUNTY
GA	ELBERT COUNTY
GA	EMANUEL COUNTY
GA	EVANS COUNTY
GA	FAYETTE COUNTY
GA	FLOYD COUNTY
GA	FORSYTH COUNTY
GA	FRANKLIN COUNTY
GA	FULTON COUNTY
GA	GILMER COUNTY
GA	GLASCOCK COUNTY
GA	GLYNN COUNTY
GA	GORDON COUNTY

STATE	COUNTY
GA	GRADY COUNTY
GA	GREENE COUNTY
GA	GWINNETT COUNTY
GA	HABERSHAM COUNTY
GA	HALL COUNTY
GA	HANCOCK COUNTY
GA	HARALSON COUNTY
GA	HARRIS COUNTY
GA	HART COUNTY
GA	HEARD COUNTY
GA	HENRY COUNTY
GA	HOUSTON COUNTY
GA	IRWIN COUNTY
GA	JACKSON COUNTY
GA	JASPER COUNTY
GA	JEFF DAVIS COUNTY
GA	JEFFERSON COUNTY
GA	JENKINS COUNTY
GA	JOHNSON COUNTY
GA	JONES COUNTY
GA	LAMAR COUNTY
GA	LANIER COUNTY

STATE	COUNTY
GA	LAURENS COUNTY
GA	LEE COUNTY
GA	LIBERTY COUNTY
GA	LINCOLN COUNTY
GA	LONG COUNTY
GA	LOWNDES COUNTY
GA	LUMPKIN COUNTY
GA	MCDUFFIE COUNTY
GA	MCINTOSH COUNTY
GA	MACON COUNTY
GA	MADISON COUNTY
GA	MARION COUNTY
GA	MERIWETHER COUNTY
GA	MILLER COUNTY
GA	MITCHELL COUNTY
GA	MONROE COUNTY
GA	MONTGOMERY COUNTY
GA	MORGAN COUNTY
GA	MURRAY COUNTY
GA	MUSCOGEE COUNTY
GA	NEWTON COUNTY
GA	OCONEE COUNTY

STATE	COUNTY
GA	OGLETHORPE COUNTY
GA	PAULDING COUNTY
GA	PEACH COUNTY
GA	PICKENS COUNTY
GA	PIERCE COUNTY
GA	PIKE COUNTY
GA	POLK COUNTY
GA	PULASKI COUNTY
GA	PUTNAM COUNTY
GA	QUITMAN COUNTY
GA	RABUN COUNTY
GA	RANDOLPH COUNTY
GA	RICHMOND COUNTY
GA	ROCKDALE COUNTY
GA	SCHLEY COUNTY
GA	SCREVEN COUNTY
GA	SEMINOLE COUNTY
GA	SPALDING COUNTY
GA	STEPHENS COUNTY
GA	STEWART COUNTY
GA	SUMTER COUNTY
GA	TALBOT COUNTY

STATE	COUNTY
GA	TALIAFERRO COUNTY
GA	TATTNALL COUNTY
GA	TAYLOR COUNTY
GA	TELFAIR COUNTY
GA	TERRELL COUNTY
GA	THOMAS COUNTY
GA	TIFT COUNTY
GA	TOOMBS COUNTY
GA	TOWNS COUNTY
GA	TROUP COUNTY
GA	TURNER COUNTY
GA	TWIGGS COUNTY
GA	UNION COUNTY
GA	WALKER COUNTY
GA	WALTON COUNTY
GA	WARE COUNTY
GA	WARREN COUNTY
GA	WASHINGTON COUNTY
GA	WAYNE COUNTY
GA	WEBSTER COUNTY
GA	WHEELER COUNTY
GA	WHITE COUNTY

STATE	COUNTY
GA	WHITFIELD COUNTY
GA	WILCOX COUNTY
GA	WILKES COUNTY
GA	WILKINSON COUNTY
GA	WORTH COUNTY
HI	HAWAII COUNTY
HI	HONOLULU COUNTY
HI	KAUAI COUNTY
HI	MAUI COUNTY
ID	ADA COUNTY
ID	ADAMS COUNTY
ID	BANNOCK COUNTY
ID	BEAR LAKE COUNTY
ID	BENEWAH COUNTY
ID	BINGHAM COUNTY
ID	BLAINE COUNTY
ID	BOISE COUNTY
ID	BONNER COUNTY
ID	BONNEVILLE COUNTY
ID	BOUNDARY COUNTY
ID	BUTTE COUNTY
ID	CANYON COUNTY

STATE	COUNTY
ID	CARIBOU COUNTY
ID	CASSIA COUNTY
ID	CLEARWATER COUNTY
ID	CUSTER COUNTY
ID	ELMORE COUNTY
ID	FRANKLIN COUNTY
ID	FREMONT COUNTY
ID	GEM COUNTY
ID	GOODING COUNTY
ID	IDAHO COUNTY
ID	JEFFERSON COUNTY
ID	JEROME COUNTY
ID	KOOTENAI COUNTY
ID	LATAH COUNTY
ID	LEMHI COUNTY
ID	LEWIS COUNTY
ID	LINCOLN COUNTY
ID	MADISON COUNTY
ID	MINIDOKA COUNTY
ID	NEZ PERCE COUNTY
ID	ONEIDA COUNTY
ID	OWYHEE COUNTY
ID	PAYETTE COUNTY
ID	POWER COUNTY
ID	SHOSHONE COUNTY
ID	TETON COUNTY
ID	TWIN FALLS COUNTY
ID	VALLEY COUNTY
ID	WASHINGTON COUNTY
IL	ADAMS COUNTY
IL	ALEXANDER COUNTY
IL	BOND COUNTY
IL	BOONE COUNTY
IL	BROWN COUNTY
IL	CHAMPAIGN COUNTY
IL	CLARK COUNTY
IL	CLAY COUNTY
IL	CLINTON COUNTY
IL	COLES COUNTY
IL	COOK COUNTY
IL	CUMBERLAND COUNTY
IL	DEKALB COUNTY
IL	DE WITT COUNTY
IL	DOUGLAS COUNTY
IL	DUPAGE COUNTY
IL	EDGAR COUNTY
IL	EFFINGHAM COUNTY
IL	FORD COUNTY
IL	FRANKLIN COUNTY
IL	GREENE COUNTY
IL	GRUNDY COUNTY
IL	HANCOCK COUNTY
IL	HENDERSON COUNTY
IL	HENRY COUNTY
IL	IROQUOIS COUNTY
IL	JACKSON COUNTY
IL	JASPER COUNTY
IL	JEFFERSON COUNTY
IL	JERSEY COUNTY
IL	JO DAVIESS COUNTY
IL	JOHNSON COUNTY
IL	KANE COUNTY
IL	KANKAKEE COUNTY
IL	KENDALL COUNTY
IL	KNOX COUNTY
IL	LAKE COUNTY

STATE	COUNTY
IL	LASALLE COUNTY
IL	LAWRENCE COUNTY
IL	LIVINGSTON COUNTY
IL	LOGAN COUNTY
IL	MCDONOUGH COUNTY
IL	MCHENRY COUNTY
IL	MCLEAN COUNTY
IL	MACON COUNTY
IL	MACOUPIN COUNTY
IL	MADISON COUNTY
IL	MARION COUNTY
IL	MASSAC COUNTY
IL	MERCER COUNTY
IL	MONROE COUNTY
IL	MONTGOMERY COUNTY
IL	MORGAN COUNTY
IL	PEORIA COUNTY
IL	PERRY COUNTY
IL	PIATT COUNTY
IL	POPE COUNTY
IL	RANDOLPH COUNTY
IL	RICHLAND COUNTY

STATE	COUNTY
IL	ROCK ISLAND COUNTY
IL	ST. CLAIR COUNTY
IL	SANGAMON COUNTY
IL	SCHUYLER COUNTY
IL	SHELBY COUNTY
IL	STARK COUNTY
IL	STEPHENSON COUNTY
IL	TAZEWELL COUNTY
IL	VERMILION COUNTY
IL	WASHINGTON COUNTY
IL	WAYNE COUNTY
IL	WHITESIDE COUNTY
IL	WILL COUNTY
IL	WILLIAMSON COUNTY
IL	WINNEBAGO COUNTY
IL	WOODFORD COUNTY
IN	ADAMS COUNTY
IN	ALLEN COUNTY
IN	BARTHOLOMEW COUNTY
IN	BENTON COUNTY
IN	BLACKFORD COUNTY
IN	BOONE COUNTY

STATE	COUNTY
IN	BROWN COUNTY
IN	CARROLL COUNTY
IN	CASS COUNTY
IN	CLARK COUNTY
IN	CLAY COUNTY
IN	CLINTON COUNTY
IN	CRAWFORD COUNTY
IN	DAVIESS COUNTY
IN	DEARBORN COUNTY
IN	DECATUR COUNTY
IN	DEKALB COUNTY
IN	DELAWARE COUNTY
IN	DUBOIS COUNTY
IN	ELKHART COUNTY
IN	FAYETTE COUNTY
IN	FLOYD COUNTY
IN	FOUNTAIN COUNTY
IN	FRANKLIN COUNTY
IN	FULTON COUNTY
IN	GIBSON COUNTY
IN	GRANT COUNTY
IN	GREENE COUNTY

STATE	COUNTY
IN	HAMILTON COUNTY
IN	HANCOCK COUNTY
IN	HARRISON COUNTY
IN	HENDRICKS COUNTY
IN	HENRY COUNTY
IN	HOWARD COUNTY
IN	HUNTINGTON COUNTY
IN	JACKSON COUNTY
IN	JASPER COUNTY
IN	JAY COUNTY
IN	JEFFERSON COUNTY
IN	JENNINGS COUNTY
IN	JOHNSON COUNTY
IN	KNOX COUNTY
IN	KOSCIUSKO COUNTY
IN	LAGRANGE COUNTY
IN	LAKE COUNTY
IN	LAPORTE COUNTY
IN	LAWRENCE COUNTY
IN	MADISON COUNTY
IN	MARION COUNTY
IN	MARSHALL COUNTY
IN	MARTIN COUNTY
IN	MIAMI COUNTY
IN	MONROE COUNTY
IN	MONTGOMERY COUNTY
IN	MORGAN COUNTY
IN	NEWTON COUNTY
IN	NOBLE COUNTY
IN	OHIO COUNTY
IN	ORANGE COUNTY
IN	OWEN COUNTY
IN	PARKE COUNTY
IN	PERRY COUNTY
IN	PIKE COUNTY
IN	PORTER COUNTY
IN	POSEY COUNTY
IN	PULASKI COUNTY
IN	PUTNAM COUNTY
IN	RANDOLPH COUNTY
IN	RIPLEY COUNTY
IN	RUSH COUNTY
IN	ST. JOSEPH COUNTY
IN	SCOTT COUNTY
IN	SHELBY COUNTY
IN	SPENCER COUNTY
IN	STARKE COUNTY
IN	STEUBEN COUNTY
IN	SULLIVAN COUNTY
IN	SWITZERLAND COUNTY
IN	TIPPECANOE COUNTY
IN	TIPTON COUNTY
IN	UNION COUNTY
IN	VANDERBURGH COUNTY
IN	VERMILLION COUNTY
IN	VIGO COUNTY
IN	WABASH COUNTY
IN	WARREN COUNTY
IN	WARRICK COUNTY
IN	WASHINGTON COUNTY
IN	WAYNE COUNTY
IN	WELLS COUNTY
IN	WHITE COUNTY
IN	WHITLEY COUNTY
IA	ADAIR COUNTY
IA	ALLAMAKEE COUNTY

STATE	COUNTY
IA	APPANOOSE COUNTY
IA	AUDUBON COUNTY
IA	BENTON COUNTY
IA	BLACK HAWK COUNTY
IA	BOONE COUNTY
IA	BREMER COUNTY
IA	BUCHANAN COUNTY
IA	BUENA VISTA COUNTY
IA	BUTLER COUNTY
IA	CALHOUN COUNTY
IA	CARROLL COUNTY
IA	CASS COUNTY
IA	CEDAR COUNTY
IA	CERRO GORDO COUNTY
IA	CHEROKEE COUNTY
IA	CHICKASAW COUNTY
IA	CLARKE COUNTY
IA	CLAY COUNTY
IA	CLAYTON COUNTY
IA	CLINTON COUNTY
IA	CRAWFORD COUNTY
IA	DALLAS COUNTY

STATE	COUNTY
IA	DAVIS COUNTY
IA	DECATUR COUNTY
IA	DELAWARE COUNTY
IA	DES MOINES COUNTY
IA	DICKINSON COUNTY
IA	DUBUQUE COUNTY
IA	EMMET COUNTY
IA	FAYETTE COUNTY
IA	FLOYD COUNTY
IA	FRANKLIN COUNTY
IA	FREMONT COUNTY
IA	GREENE COUNTY
IA	GRUNDY COUNTY
IA	GUTHRIE COUNTY
IA	HAMILTON COUNTY
IA	HANCOCK COUNTY
IA	HARDIN COUNTY
IA	HARRISON COUNTY
IA	HENRY COUNTY
IA	HOWARD COUNTY
IA	HUMBOLDT COUNTY
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STATE	COUNTY
IA	IOWA COUNTY
IA	JACKSON COUNTY
IA	JASPER COUNTY
IA	JEFFERSON COUNTY
IA	JOHNSON COUNTY
IA	JONES COUNTY
IA	KEOKUK COUNTY
IA	KOSSUTH COUNTY
IA	LEE COUNTY
IA	LINN COUNTY
IA	LOUISA COUNTY
IA	LUCAS COUNTY
IA	LYON COUNTY
IA	MADISON COUNTY
IA	MAHASKA COUNTY
IA	MARION COUNTY
IA	MARSHALL COUNTY
IA	MILLS COUNTY
IA	MITCHELL COUNTY
IA	MONONA COUNTY
IA	MONROE COUNTY
IA	MONTGOMERY COUNTY

STATE	COUNTY
IA	MUSCATINE COUNTY
IA	O'BRIEN COUNTY
IA	OSCEOLA COUNTY
IA	PAGE COUNTY
IA	PALO ALTO COUNTY
IA	PLYMOUTH COUNTY
IA	POCAHONTAS COUNTY
IA	POLK COUNTY
IA	POTTAWATTAMIE COUNTY
IA	POWESHIEK COUNTY
IA	RINGGOLD COUNTY
IA	SAC COUNTY
IA	SCOTT COUNTY
IA	SHELBY COUNTY
IA	SIOUX COUNTY
IA	STORY COUNTY
IA	TAMA COUNTY
IA	TAYLOR COUNTY
IA	UNION COUNTY
IA	VAN BUREN COUNTY
IA	WAPELLO COUNTY
IA	WARREN COUNTY

STATE	COUNTY
IA	WASHINGTON COUNTY
IA	WAYNE COUNTY
IA	WEBSTER COUNTY
IA	WINNEBAGO COUNTY
IA	WINNESHIEK COUNTY
IA	WOODBURY COUNTY
IA	WORTH COUNTY
IA	WRIGHT COUNTY
KS	ALLEN COUNTY
KS	ANDERSON COUNTY
KS	ATCHISON COUNTY
KS	BOURBON COUNTY
KS	BROWN COUNTY
KS	BUTLER COUNTY
KS	CHASE COUNTY
KS	CHEROKEE COUNTY
KS	CHEYENNE COUNTY
KS	CLAY COUNTY
KS	CLOUD COUNTY
KS	COFFEY COUNTY
KS	COMANCHE COUNTY
KS	COWLEY COUNTY

STATE	COUNTY
KS	CRAWFORD COUNTY
KS	DICKINSON COUNTY
KS	DONIPHAN COUNTY
KS	DOUGLAS COUNTY
KS	EDWARDS COUNTY
KS	ELK COUNTY
KS	ELLIS COUNTY
KS	ELLSWORTH COUNTY
KS	FRANKLIN COUNTY
KS	GEARY COUNTY
KS	GOVE COUNTY
KS	GRAHAM COUNTY
KS	HARVEY COUNTY
KS	HASKELL COUNTY
KS	JACKSON COUNTY
KS	JEFFERSON COUNTY
KS	JEWELL COUNTY
KS	JOHNSON COUNTY
KS	KEARNY COUNTY
KS	KINGMAN COUNTY
KS	KIOWA COUNTY
KS	LABETTE COUNTY

STATE	COUNTY
KS	LEAVENWORTH COUNTY
KS	LINCOLN COUNTY
KS	LINN COUNTY
KS	LOGAN COUNTY
KS	LYON COUNTY
KS	MCPHERSON COUNTY
KS	MARION COUNTY
KS	MARSHALL COUNTY
KS	MEADE COUNTY
KS	MIAMI COUNTY
KS	MITCHELL COUNTY
KS	MORRIS COUNTY
KS	MORTON COUNTY
KS	NEMAHA COUNTY
KS	NEOSHO COUNTY
KS	NESS COUNTY
KS	NORTON COUNTY
KS	OSAGE COUNTY
KS	OSBORNE COUNTY
KS	OTTAWA COUNTY
KS	PAWNEE COUNTY
KS	PHILLIPS COUNTY
KS	POTTAWATOMIE COUNTY
KS	PRATT COUNTY
KS	RAWLINS COUNTY
KS	RENO COUNTY
KS	REPUBLIC COUNTY
KS	RICE COUNTY
KS	RILEY COUNTY
KS	RUSH COUNTY
KS	SALINE COUNTY
KS	SCOTT COUNTY
KS	SEDGWICK COUNTY
KS	SHAWNEE COUNTY
KS	SHERMAN COUNTY
KS	STAFFORD COUNTY
KS	SUMNER COUNTY
KS	THOMAS COUNTY
KS	WABAUNSEE COUNTY
KS	WASHINGTON COUNTY
KS	WOODSON COUNTY
KS	WYANDOTTE COUNTY
KY	ADAIR COUNTY
KY	ALLEN COUNTY
KY	ANDERSON COUNTY
KY	BALLARD COUNTY
KY	BARREN COUNTY
KY	BATH COUNTY
KY	BELL COUNTY
KY	BOONE COUNTY
KY	BOURBON COUNTY
KY	BOYD COUNTY
KY	BOYLE COUNTY
KY	BRACKEN COUNTY
KY	BREATHITT COUNTY
KY	BRECKINRIDGE COUNTY
KY	BULLITT COUNTY
KY	BUTLER COUNTY
KY	CALDWELL COUNTY
KY	CALLOWAY COUNTY
KY	CAMPBELL COUNTY
KY	CARLISLE COUNTY
KY	CARROLL COUNTY
KY	CARTER COUNTY
KY	CASEY COUNTY
KY	CHRISTIAN COUNTY

STATE	COUNTY
KY	CLARK COUNTY
KY	CLAY COUNTY
KY	CLINTON COUNTY
KY	CRITTENDEN COUNTY
KY	CUMBERLAND COUNTY
KY	DAVIESS COUNTY
KY	EDMONSON COUNTY
KY	ELLIOTT COUNTY
KY	ESTILL COUNTY
KY	FAYETTE COUNTY
KY	FLEMING COUNTY
KY	FLOYD COUNTY
KY	FRANKLIN COUNTY
KY	FULTON COUNTY
KY	GALLATIN COUNTY
KY	GARRARD COUNTY
KY	GRANT COUNTY
KY	GRAVES COUNTY
KY	GRAYSON COUNTY
KY	GREEN COUNTY
KY	GREENUP COUNTY
KY	HANCOCK COUNTY

STATE	COUNTY
KY	HARDIN COUNTY
KY	HARLAN COUNTY
KY	HARRISON COUNTY
KY	HART COUNTY
KY	HENDERSON COUNTY
KY	HENRY COUNTY
KY	HICKMAN COUNTY
KY	HOPKINS COUNTY
KY	JACKSON COUNTY
KY	JEFFERSON COUNTY
KY	JESSAMINE COUNTY
KY	JOHNSON COUNTY
KY	KENTON COUNTY
KY	KNOTT COUNTY
KY	KNOX COUNTY
KY	LARUE COUNTY
KY	LAUREL COUNTY
KY	LAWRENCE COUNTY
KY	LEE COUNTY
KY	LESLIE COUNTY
KY	LETCHER COUNTY
KY	LEWIS COUNTY

STATE	COUNTY
KY	LINCOLN COUNTY
KY	LIVINGSTON COUNTY
KY	LOGAN COUNTY
KY	LYON COUNTY
KY	MCCRACKEN COUNTY
KY	MCCREARY COUNTY
KY	MCLEAN COUNTY
KY	MADISON COUNTY
KY	MAGOFFIN COUNTY
KY	MARION COUNTY
KY	MARSHALL COUNTY
KY	MARTIN COUNTY
KY	MASON COUNTY
KY	MEADE COUNTY
KY	MENIFEE COUNTY
KY	MERCER COUNTY
KY	METCALFE COUNTY
KY	MONROE COUNTY
KY	MONTGOMERY COUNTY
KY	MORGAN COUNTY
KY	MUHLENBERG COUNTY
KY	NELSON COUNTY

STATE	COUNTY
KY	NICHOLAS COUNTY
KY	OHIO COUNTY
KY	OLDHAM COUNTY
KY	OWEN COUNTY
KY	OWSLEY COUNTY
KY	PENDLETON COUNTY
KY	PERRY COUNTY
KY	PIKE COUNTY
KY	POWELL COUNTY
KY	PULASKI COUNTY
KY	ROBERTSON COUNTY
KY	ROCKCASTLE COUNTY
KY	ROWAN COUNTY
KY	RUSSELL COUNTY
KY	SCOTT COUNTY
KY	SHELBY COUNTY
KY	SIMPSON COUNTY
KY	SPENCER COUNTY
KY	TAYLOR COUNTY
KY	TODD COUNTY
KY	TRIGG COUNTY
KY	TRIMBLE COUNTY
KY	UNION COUNTY
KY	WARREN COUNTY
KY	WASHINGTON COUNTY
KY	WAYNE COUNTY
KY	WEBSTER COUNTY
KY	WHITLEY COUNTY
KY	WOLFE COUNTY
KY	WOODFORD COUNTY
LA	ACADIA PARISH
LA	ALLEN PARISH
LA	ASCENSION PARISH
LA	ASSUMPTION PARISH
LA	AVOYELLES PARISH
LA	BEAUREGARD PARISH
LA	BIENVILLE PARISH
LA	BOSSIER PARISH
LA	CADDO PARISH
LA	CALCASIEU PARISH
LA	CALDWELL PARISH
LA	CAMERON PARISH
LA	CONCORDIA PARISH
LA	DE SOTO PARISH
LA	EAST BATON ROUGE PARISH
LA	EAST CARROLL PARISH
LA	EAST FELICIANA PARISH
LA	EVANGELINE PARISH
LA	FRANKLIN PARISH
LA	GRANT PARISH
LA	IBERIA PARISH
LA	IBERVILLE PARISH
LA	JEFFERSON PARISH
LA	JEFFERSON DAVIS PARISH
LA	LAFAYETTE PARISH
LA	LAFOURCHE PARISH
LA	LA SALLE PARISH
LA	LINCOLN PARISH
LA	LIVINGSTON PARISH
LA	MADISON PARISH
LA	MOREHOUSE PARISH
LA	NATCHITOCHES PARISH
LA	ORLEANS PARISH
LA	OUACHITA PARISH
LA	PLAQUEMINES PARISH
LA	POINTE COUPEE PARISH

STATE	COUNTY
LA	RAPIDES PARISH
LA	RED RIVER PARISH
LA	RICHLAND PARISH
LA	ST. BERNARD PARISH
LA	ST. CHARLES PARISH
LA	ST. HELENA PARISH
LA	ST. JAMES PARISH
LA	ST. JOHN THE BAPTIST PARISH
LA	ST. LANDRY PARISH
LA	ST. MARTIN PARISH
LA	ST. MARY PARISH
LA	ST. TAMMANY PARISH
LA	TANGIPAHOA PARISH
LA	TENSAS PARISH
LA	TERREBONNE PARISH
LA	VERMILION PARISH
LA	VERNON PARISH
LA	WASHINGTON PARISH
LA	WEBSTER PARISH
LA	WEST BATON ROUGE PARISH
LA	WEST CARROLL PARISH
LA	WEST FELICIANA PARISH
LA	WINN PARISH
ME	ANDROSCOGGIN COUNTY
ME	AROOSTOOK COUNTY
ME	CUMBERLAND COUNTY
ME	FRANKLIN COUNTY
ME	HANCOCK COUNTY
ME	KENNEBEC COUNTY
ME	KNOX COUNTY
ME	LINCOLN COUNTY
ME	OXFORD COUNTY
ME	PENOBSCOT COUNTY
ME	PISCATAQUIS COUNTY
ME	SAGADAHOC COUNTY
ME	SOMERSET COUNTY
ME	WALDO COUNTY
ME	WASHINGTON COUNTY
ME	YORK COUNTY
MD	ALLEGANY COUNTY
MD	ANNE ARUNDEL COUNTY
MD	BALTIMORE COUNTY
MD	CALVERT COUNTY
MD	CAROLINE COUNTY
MD	CARROLL COUNTY
MD	CECIL COUNTY
MD	CHARLES COUNTY
MD	DORCHESTER COUNTY
MD	FREDERICK COUNTY
MD	GARRETT COUNTY
MD	HARFORD COUNTY
MD	HOWARD COUNTY
MD	KENT COUNTY
MD	MONTGOMERY COUNTY
MD	PRINCE GEORGE'S COUNTY
MD	QUEEN ANNE'S COUNTY
MD	ST. MARY'S COUNTY
MD	SOMERSET COUNTY
MD	TALBOT COUNTY
MD	WASHINGTON COUNTY
MD	WICOMICO COUNTY
MD	WORCESTER COUNTY
MD	BALTIMORE CITY
MA	BARNSTABLE COUNTY
MA	BERKSHIRE COUNTY
MA	BRISTOL COUNTY

STATE	COUNTY
MA	ESSEX COUNTY
MA	FRANKLIN COUNTY
MA	HAMPDEN COUNTY
MA	HAMPSHIRE COUNTY
MA	MIDDLESEX COUNTY
MA	NORFOLK COUNTY
MA	PLYMOUTH COUNTY
MA	SUFFOLK COUNTY
MA	WORCESTER COUNTY
MI	ALCONA COUNTY
MI	ALGER COUNTY
MI	ALLEGAN COUNTY
MI	ALPENA COUNTY
MI	ANTRIM COUNTY
MI	ARENAC COUNTY
MI	BARAGA COUNTY
MI	BARRY COUNTY
MI	BAY COUNTY
MI	BENZIE COUNTY
MI	BERRIEN COUNTY
MI	BRANCH COUNTY
MI	CALHOUN COUNTY
MI	CASS COUNTY
MI	CHARLEVOIX COUNTY
MI	CHEBOYGAN COUNTY
MI	CLARE COUNTY
MI	CLINTON COUNTY
MI	CRAWFORD COUNTY
MI	EATON COUNTY
MI	EMMET COUNTY
MI	GENESEE COUNTY
MI	GLADWIN COUNTY
MI	GRAND TRAVERSE COUNTY
MI	GRATIOT COUNTY
MI	HILLSDALE COUNTY
MI	HURON COUNTY
MI	INGHAM COUNTY
MI	IONIA COUNTY
MI	IOSCO COUNTY
MI	IRON COUNTY
MI	ISABELLA COUNTY
MI	JACKSON COUNTY
MI	KALAMAZOO COUNTY
MI	KALKASKA COUNTY
MI	KENT COUNTY
MI	LAKE COUNTY
MI	LAPEER COUNTY
MI	LEELANAU COUNTY
MI	LENAWEE COUNTY
MI	LIVINGSTON COUNTY
MI	MACKINAC COUNTY
MI	MACOMB COUNTY
MI	MANISTEE COUNTY
MI	MARQUETTE COUNTY
MI	MASON COUNTY
MI	MECOSTA COUNTY
MI	MENOMINEE COUNTY
MI	MIDLAND COUNTY
MI	MISSAUKEE COUNTY
MI	MONROE COUNTY
MI	MONTCALM COUNTY
MI	MONTMORENCY COUNTY
MI	MUSKEGON COUNTY
MI	NEWAYGO COUNTY
MI	OAKLAND COUNTY
MI	OCEANA COUNTY

STATE	COUNTY
MI	OGEMAW COUNTY
MI	ONTONAGON COUNTY
MI	OSCEOLA COUNTY
MI	OTSEGO COUNTY
MI	OTTAWA COUNTY
MI	PRESQUE ISLE COUNTY
MI	ROSCOMMON COUNTY
MI	SAGINAW COUNTY
MI	ST. CLAIR COUNTY
MI	ST. JOSEPH COUNTY
MI	SANILAC COUNTY
MI	SHIAWASSEE COUNTY
MI	TUSCOLA COUNTY
MI	VAN BUREN COUNTY
MI	WASHTENAW COUNTY
MI	WAYNE COUNTY
MI	WEXFORD COUNTY
MN	AITKIN COUNTY
MN	ANOKA COUNTY
MN	BECKER COUNTY
MN	BELTRAMI COUNTY
MN	BENTON COUNTY
MN	BIG STONE COUNTY
MN	BLUE EARTH COUNTY
MN	BROWN COUNTY
MN	CARLTON COUNTY
MN	CARVER COUNTY
MN	CASS COUNTY
MN	CHIPPEWA COUNTY
MN	CHISAGO COUNTY
MN	CLAY COUNTY
MN	CLEARWATER COUNTY
MN	COOK COUNTY
MN	COTTONWOOD COUNTY
MN	CROW WING COUNTY
MN	DAKOTA COUNTY
MN	DODGE COUNTY
MN	DOUGLAS COUNTY
MN	FARIBAULT COUNTY
MN	FILLMORE COUNTY
MN	FREEBORN COUNTY
MN	GOODHUE COUNTY
MN	GRANT COUNTY
MN	HENNEPIN COUNTY
MN	HOUSTON COUNTY
MN	HUBBARD COUNTY
MN	ISANTI COUNTY
MN	ITASCA COUNTY
MN	JACKSON COUNTY
MN	KANABEC COUNTY
MN	KANDIYOHI COUNTY
MN	LAC QUI PARLE COUNTY
MN	LAKE COUNTY
MN	LAKE OF THE WOODS COUNTY
MN	LE SUEUR COUNTY
MN	LINCOLN COUNTY
MN	LYON COUNTY
MN	MCLEOD COUNTY
MN	MAHNOMEN COUNTY
MN	MARSHALL COUNTY
MN	MARTIN COUNTY
MN	MEEKER COUNTY
MN	MILLE LACS COUNTY
MN	MORRISON COUNTY
MN	MOWER COUNTY
MN	MURRAY COUNTY

STATE	COUNTY
MN	NICOLLET COUNTY
MN	NOBLES COUNTY
MN	NORMAN COUNTY
MN	OLMSTED COUNTY
MN	OTTER TAIL COUNTY
MN	PENNINGTON COUNTY
MN	PINE COUNTY
MN	PIPESTONE COUNTY
MN	POLK COUNTY
MN	POPE COUNTY
MN	RAMSEY COUNTY
MN	RED LAKE COUNTY
MN	REDWOOD COUNTY
MN	RENVILLE COUNTY
MN	RICE COUNTY
MN	ROCK COUNTY
MN	ROSEAU COUNTY
MN	ST. LOUIS COUNTY
MN	SCOTT COUNTY
MN	SHERBURNE COUNTY
MN	SIBLEY COUNTY
MN	STEARNS COUNTY
MN	STEELE COUNTY
MN	STEVENS COUNTY
MN	SWIFT COUNTY
MN	TODD COUNTY
MN	TRAVERSE COUNTY
MN	WABASHA COUNTY
MN	WADENA COUNTY
MN	WASECA COUNTY
MN	WASHINGTON COUNTY
MN	WATONWAN COUNTY
MN	WILKIN COUNTY
MN	WINONA COUNTY
MN	WRIGHT COUNTY
MN	YELLOW MEDICINE
MS	ADAMS COUNTY
MS	ALCORN COUNTY
MS	AMITE COUNTY
MS	ATTALA COUNTY
MS	BENTON COUNTY
MS	BOLIVAR COUNTY
MS	CALHOUN COUNTY
MS	CARROLL COUNTY
MS	CHICKASAW COUNTY
MS	CHOCTAW COUNTY
MS	CLAIBORNE COUNTY
MS	CLARKE COUNTY
MS	CLAY COUNTY
MS	COAHOMA COUNTY
MS	COPIAH COUNTY
MS	COVINGTON COUNTY
MS	DESOTO COUNTY
MS	FORREST COUNTY
MS	FRANKLIN COUNTY
MS	GEORGE COUNTY
MS	GREENE COUNTY
MS	GRENADA COUNTY
MS	HANCOCK COUNTY
MS	HARRISON COUNTY
MS	HINDS COUNTY
MS	HOLMES COUNTY
MS	HUMPHREYS COUNTY
MS	ISSAQUENA COUNTY
MS	ITAWAMBA COUNTY
MS	JACKSON COUNTY

STATE	COUNTY
MS	JASPER COUNTY
MS	JEFFERSON COUNTY
MS	JEFFERSON DAVIS COUNTY
MS	JONES COUNTY
MS	KEMPER COUNTY
MS	LAFAYETTE COUNTY
MS	LAMAR COUNTY
MS	LAUDERDALE COUNTY
MS	LAWRENCE COUNTY
MS	LEAKE COUNTY
MS	LEE COUNTY
MS	LEFLORE COUNTY
MS	LINCOLN COUNTY
MS	LOWNDES COUNTY
MS	MADISON COUNTY
MS	MARION COUNTY
MS	MARSHALL COUNTY
MS	MONROE COUNTY
MS	MONTGOMERY COUNTY
MS	NESHOBA COUNTY
MS	NEWTON COUNTY
MS	NOXUBEE COUNTY
MS	OKTIBBEHA COUNTY
MS	PANOLA COUNTY
MS	PEARL RIVER COUNTY
MS	PERRY COUNTY
MS	PIKE COUNTY
MS	PONTOTOC COUNTY
MS	PRENTISS COUNTY
MS	QUITMAN COUNTY
MS	RANKIN COUNTY
MS	SCOTT COUNTY
MS	SHARKEY COUNTY
MS	SIMPSON COUNTY
MS	SMITH COUNTY
MS	STONE COUNTY
MS	SUNFLOWER COUNTY
MS	TALLAHATCHIE COUNTY
MS	TATE COUNTY
MS	TIPPAH COUNTY
MS	TISHOMINGO COUNTY
MS	TUNICA COUNTY
MS	UNION COUNTY
MS	WALTHALL COUNTY
MS	WARREN COUNTY
MS	WASHINGTON COUNTY
MS	WAYNE COUNTY
MS	WEBSTER COUNTY
MS	WILKINSON COUNTY
MS	WINSTON COUNTY
MS	YALOBUSHA COUNTY
MS	YAZOO COUNTY
MO	ADAIR COUNTY
MO	ANDREW COUNTY
MO	ATCHISON COUNTY
MO	AUDRAIN COUNTY
MO	BARRY COUNTY
MO	BARTON COUNTY
MO	BATES COUNTY
MO	BENTON COUNTY
MO	BOLLINGER COUNTY
MO	BOONE COUNTY
MO	BUCHANAN COUNTY
MO	BUTLER COUNTY
MO	CALDWELL COUNTY
MO	CALLAWAY COUNTY

STATE	COUNTY
MO	CAMDEN COUNTY
MO	CAPE GIRARDEAU COUNTY
MO	CARROLL COUNTY
MO	CARTER COUNTY
MO	CASS COUNTY
MO	CEDAR COUNTY
MO	CHARITON COUNTY
MO	CHRISTIAN COUNTY
MO	CLARK COUNTY
MO	CLAY COUNTY
MO	CLINTON COUNTY
MO	COLE COUNTY
MO	COOPER COUNTY
MO	CRAWFORD COUNTY
MO	DADE COUNTY
MO	DALLAS COUNTY
MO	DAVIESS COUNTY
MO	DEKALB COUNTY
MO	DENT COUNTY
MO	DOUGLAS COUNTY
MO	DUNKLIN COUNTY
MO	FRANKLIN COUNTY

STATE	COUNTY
MO	GASCONADE COUNTY
MO	GENTRY COUNTY
MO	GREENE COUNTY
MO	GRUNDY COUNTY
MO	HARRISON COUNTY
MO	HENRY COUNTY
MO	HICKORY COUNTY
MO	HOLT COUNTY
MO	HOWARD COUNTY
MO	HOWELL COUNTY
MO	IRON COUNTY
MO	JACKSON COUNTY
MO	JASPER COUNTY
MO	JEFFERSON COUNTY
MO	JOHNSON COUNTY
MO	KNOX COUNTY
MO	LACLEDE COUNTY
MO	LAFAYETTE COUNTY
MO	LAWRENCE COUNTY
MO	LEWIS COUNTY
MO	LINCOLN COUNTY
MO	LINN COUNTY

STATE	COUNTY
MO	LIVINGSTON COUNTY
MO	MCDONALD COUNTY
MO	MACON COUNTY
MO	MADISON COUNTY
MO	MARIES COUNTY
MO	MARION COUNTY
MO	MERCER COUNTY
MO	MILLER COUNTY
MO	MISSISSIPPI COUNTY
MO	MONITEAU COUNTY
MO	MONROE COUNTY
MO	MONTGOMERY COUNTY
MO	MORGAN COUNTY
MO	NEW MADRID COUNTY
MO	NEWTON COUNTY
MO	NODAWAY COUNTY
MO	OREGON COUNTY
MO	OSAGE COUNTY
MO	OZARK COUNTY
MO	PEMISCOT COUNTY
MO	PERRY COUNTY
MO	PETTIS COUNTY

STATE	COUNTY
MO	PHELPS COUNTY
MO	PIKE COUNTY
MO	PLATTE COUNTY
MO	POLK COUNTY
MO	PULASKI COUNTY
MO	PUTNAM COUNTY
MO	RALLS COUNTY
MO	RANDOLPH COUNTY
MO	RAY COUNTY
MO	REYNOLDS COUNTY
MO	RIPLEY COUNTY
MO	ST. CHARLES COUNTY
MO	ST. CLAIR COUNTY
MO	STE. GENEVIEVE COUNTY
MO	ST. FRANCOIS COUNTY
MO	ST. LOUIS COUNTY
MO	SALINE COUNTY
MO	SCHUYLER COUNTY
MO	SCOTLAND COUNTY
MO	SCOTT COUNTY
MO	SHANNON COUNTY
MO	SHELBY COUNTY

STATE	COUNTY
MO	STODDARD COUNTY
MO	STONE COUNTY
MO	SULLIVAN COUNTY
MO	TANEY COUNTY
MO	TEXAS COUNTY
MO	VERNON COUNTY
MO	WARREN COUNTY
MO	WASHINGTON COUNTY
MO	WAYNE COUNTY
MO	WEBSTER COUNTY
MO	WORTH COUNTY
MO	WRIGHT COUNTY
MO	ST. LOUIS CITY
MT	BIG HORN COUNTY
MT	GALLATIN COUNTY
MT	LAKE COUNTY
MT	LEWIS AND CLARK COUNTY
MT	LINCOLN COUNTY
MT	MISSOULA COUNTY
MT	PHILLIPS COUNTY
MT	PONDERA COUNTY
MT	RICHLAND COUNTY

STATE	COUNTY
MT	ROOSEVELT COUNTY
MT	ROSEBUD COUNTY
NE	ADAMS COUNTY
NE	BOX BUTTE COUNTY
NE	BUTLER COUNTY
NE	CASS COUNTY
NE	CEDAR COUNTY
NE	CHASE COUNTY
NE	CHERRY COUNTY
NE	CHEYENNE COUNTY
NE	DAKOTA COUNTY
NE	DAWES COUNTY
NE	DAWSON COUNTY
NE	DODGE COUNTY
NE	DOUGLAS COUNTY
NE	FILLMORE COUNTY
NE	FRANKLIN COUNTY
NE	FRONTIER COUNTY
NE	FURNAS COUNTY
NE	GAGE COUNTY
NE	HALL COUNTY
NE	HARLAN COUNTY

STATE	COUNTY
NE	KEITH COUNTY
NE	KIMBALL COUNTY
NE	LANCASTER COUNTY
NE	LINCOLN COUNTY
NE	MADISON COUNTY
NE	MERRICK COUNTY
NE	NEMAHA COUNTY
NE	OTOE COUNTY
NE	PERKINS COUNTY
NE	PHELPS COUNTY
NE	PIERCE COUNTY
NE	PLATTE COUNTY
NE	POLK COUNTY
NE	RED WILLOW COUNTY
NE	SARPY COUNTY
NE	SAUNDERS COUNTY
NE	SCOTTS BLUFF COUNTY
NE	SHERMAN COUNTY
NE	STANTON COUNTY
NE	THAYER COUNTY
NE	WAYNE COUNTY
NE	WEBSTER COUNTY
NE	YORK COUNTY
NV	CHURCHILL COUNTY
NV	CLARK COUNTY
NV	DOUGLAS COUNTY
NV	ELKO COUNTY
NV	ESMERALDA COUNTY
NV	EUREKA COUNTY
NV	HUMBOLDT COUNTY
NV	LANDER COUNTY
NV	LINCOLN COUNTY
NV	LYON COUNTY
NV	MINERAL COUNTY
NV	NYE COUNTY
NV	PERSHING COUNTY
NV	STOREY COUNTY
NV	WASHOE COUNTY
NV	WHITE PINE COUNTY
NV	CARSON CITY
NJ	ATLANTIC COUNTY
NJ	BERGEN COUNTY
NJ	BURLINGTON COUNTY
NJ	CAMDEN COUNTY
NJ	CAPE MAY COUNTY
NJ	CUMBERLAND COUNTY
NJ	ESSEX COUNTY
NJ	GLOUCESTER COUNTY
NJ	HUDSON COUNTY
NJ	HUNTERDON COUNTY
NJ	MERCER COUNTY
NJ	MIDDLESEX COUNTY
NJ	MONMOUTH COUNTY
NJ	MORRIS COUNTY
NJ	OCEAN COUNTY
NJ	PASSAIC COUNTY
NJ	SALEM COUNTY
NJ	SOMERSET COUNTY
NJ	SUSSEX COUNTY
NJ	UNION COUNTY
NJ	WARREN COUNTY
NM	CIBOLA COUNTY
NM	GUADALUPE COUNTY
NM	HIDALGO COUNTY
NM	LINCOLN COUNTY
NM	LOS ALAMOS COUNTY

STATE	COUNTY
NM	RIO ARRIBA COUNTY
NM	SANDOVAL COUNTY
NM	SIERRA COUNTY
NM	SOCORRO COUNTY
NM	TAOS COUNTY
NM	TORRANCE COUNTY
NY	ALBANY COUNTY
NY	ALLEGANY COUNTY
NY	BRONX COUNTY
NY	BROOME COUNTY
NY	CATTARAUGUS COUNTY
NY	CAYUGA COUNTY
NY	CHAUTAUQUA COUNTY
NY	CHEMUNG COUNTY
NY	CHENANGO COUNTY
NY	CLINTON COUNTY
NY	COLUMBIA COUNTY
NY	CORTLAND COUNTY
NY	DELAWARE COUNTY
NY	DUTCHESS COUNTY
NY	ERIE COUNTY
NY	ESSEX COUNTY

STATE	COUNTY
NY	FRANKLIN COUNTY
NY	FULTON COUNTY
NY	GENESEE COUNTY
NY	GREENE COUNTY
NY	HAMILTON COUNTY
NY	HERKIMER COUNTY
NY	JEFFERSON COUNTY
NY	KINGS COUNTY
NY	LEWIS COUNTY
NY	LIVINGSTON COUNTY
NY	MADISON COUNTY
NY	MONROE COUNTY
NY	MONTGOMERY COUNTY
NY	NASSAU COUNTY
NY	NEW YORK COUNTY
NY	NIAGARA COUNTY
NY	ONEIDA COUNTY
NY	ONONDAGA COUNTY
NY	ONTARIO COUNTY
NY	ORANGE COUNTY
NY	ORLEANS COUNTY
NY	OSWEGO COUNTY

STATE	COUNTY
NY	OTSEGO COUNTY
NY	PUTNAM COUNTY
NY	QUEENS COUNTY
NY	RENSSELAER COUNTY
NY	RICHMOND COUNTY
NY	ST. LAWRENCE COUNTY
NY	SARATOGA COUNTY
NY	SCHENECTADY COUNTY
NY	SCHOHARIE COUNTY
NY	SCHUYLER COUNTY
NY	SENECA COUNTY
NY	STEUBEN COUNTY
NY	SUFFOLK COUNTY
NY	SULLIVAN COUNTY
NY	TIOGA COUNTY
NY	TOMPKINS COUNTY
NY	ULSTER COUNTY
NY	WARREN COUNTY
NY	WASHINGTON COUNTY
NY	WAYNE COUNTY
NY	WESTCHESTER COUNTY
NY	WYOMING COUNTY

STATE	COUNTY
NY	YATES COUNTY
NC	ALLEGHANY COUNTY
NC	ANSON COUNTY
NC	ASHE COUNTY
NC	BEAUFORT COUNTY
NC	BRUNSWICK COUNTY
NC	CABARRUS COUNTY
NC	CAMDEN COUNTY
NC	COLUMBUS COUNTY
NC	CRAVEN COUNTY
NC	CUMBERLAND COUNTY
NC	DAVIE COUNTY
NC	DUPLIN COUNTY
NC	DURHAM COUNTY
NC	EDGECOMBE COUNTY
NC	GREENE COUNTY
NC	GUILFORD COUNTY
NC	HALIFAX COUNTY
NC	HARNETT COUNTY
NC	HOKE COUNTY
NC	HYDE COUNTY
NC	JOHNSTON COUNTY

STATE	COUNTY
NC	JONES COUNTY
NC	LEE COUNTY
NC	LENOIR COUNTY
NC	MITCHELL COUNTY
NC	NASH COUNTY
NC	NEW HANOVER COUNTY
NC	NORTHAMPTON COUNTY
NC	ONSLOW COUNTY
NC	PASQUOTANK COUNTY
NC	PERQUIMANS COUNTY
NC	PITT COUNTY
NC	POLK COUNTY
NC	ROBESON COUNTY
NC	SAMPSON COUNTY
NC	SURRY COUNTY
NC	TRANSYLVANIA COUNTY
NC	WATAUGA COUNTY
NC	WAYNE COUNTY
NC	WILKES COUNTY
NC	WILSON COUNTY
NC	YADKIN COUNTY
NC	YANCEY COUNTY

STATE	COUNTY
ND	ADAMS COUNTY
ND	BARNES COUNTY
ND	BENSON COUNTY
ND	BOTTINEAU COUNTY
ND	BOWMAN COUNTY
ND	BURKE COUNTY
ND	CASS COUNTY
ND	CAVALIER COUNTY
ND	DICKEY COUNTY
ND	DUNN COUNTY
ND	EDDY COUNTY
ND	EMMONS COUNTY
ND	FOSTER COUNTY
ND	GRAND FORKS COUNTY
ND	GRIGGS COUNTY
ND	HETTINGER COUNTY
ND	KIDDER COUNTY
ND	LAMOURE COUNTY
ND	LOGAN COUNTY
ND	MCHENRY COUNTY
ND	MCINTOSH COUNTY
ND	MCLEAN COUNTY

STATE	COUNTY
ND	MERCER COUNTY
ND	MORTON COUNTY
ND	NELSON COUNTY
ND	OLIVER COUNTY
ND	PEMBINA COUNTY
ND	PIERCE COUNTY
ND	RAMSEY COUNTY
ND	RANSOM COUNTY
ND	RENVILLE COUNTY
ND	RICHLAND COUNTY
ND	ROLETTE COUNTY
ND	SHERIDAN COUNTY
ND	STARK COUNTY
ND	STEELE COUNTY
ND	STUTSMAN COUNTY
ND	TOWNER COUNTY
ND	TRAILL COUNTY
ND	WALSH COUNTY
ND	WARD COUNTY
ND	WELLS COUNTY
ND	WILLIAMS COUNTY
OH	ADAMS COUNTY
OH	ALLEN COUNTY
OH	ASHLAND COUNTY
OH	ASHTABULA COUNTY
OH	ATHENS COUNTY
OH	AUGLAIZE COUNTY
OH	BELMONT COUNTY
OH	BROWN COUNTY
OH	BUTLER COUNTY
OH	CARROLL COUNTY
OH	CHAMPAIGN COUNTY
OH	CLARK COUNTY
OH	CLERMONT COUNTY
OH	CLINTON COUNTY
OH	COLUMBIANA COUNTY
OH	COSHOCTON COUNTY
OH	CRAWFORD COUNTY
OH	CUYAHOGA COUNTY
OH	DARKE COUNTY
OH	DEFIANCE COUNTY
OH	DELAWARE COUNTY
OH	ERIE COUNTY
OH	FAIRFIELD COUNTY
OH	FAYETTE COUNTY
OH	FRANKLIN COUNTY
OH	FULTON COUNTY
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OH	HAMILTON COUNTY
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OH	JACKSON COUNTY
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OH	LICKING COUNTY

STATE	COUNTY
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OH	MORROW COUNTY
OH	MUSKINGUM COUNTY
OH	NOBLE COUNTY
OH	OTTAWA COUNTY
OH	PAULDING COUNTY
OH	PERRY COUNTY
OH	PICKAWAY COUNTY
OH	PIKE COUNTY
OH	PORTAGE COUNTY
OH	PREBLE COUNTY
OH	PUTNAM COUNTY
OH	RICHLAND COUNTY
OH	ROSS COUNTY
OH	SANDUSKY COUNTY
OH	SCIOTO COUNTY
OH	SENECA COUNTY
OH	SHELBY COUNTY
OH	STARK COUNTY
OH	SUMMIT COUNTY
OH	TRUMBULL COUNTY
OH	TUSCARAWAS COUNTY
OH	UNION COUNTY
OH	VAN WERT COUNTY
OH	VINTON COUNTY
OH	WARREN COUNTY
OH	WASHINGTON COUNTY
OH	WAYNE COUNTY
OH	WILLIAMS COUNTY
OH	WOOD COUNTY
OH	WYANDOT COUNTY
OK	ADAIR COUNTY
OK	ALFALFA COUNTY
OK	ATOKA COUNTY
OK	BECKHAM COUNTY
OK	BLAINE COUNTY
OK	BRYAN COUNTY
OK	CADDO COUNTY
OK	CANADIAN COUNTY
OK	CARTER COUNTY
OK	CHEROKEE COUNTY
OK	CHOCTAW COUNTY
OK	CIMARRON COUNTY
OK	CLEVELAND COUNTY
OK	COAL COUNTY
OK	COMANCHE COUNTY
OK	COTTON COUNTY
OK	CRAIG COUNTY
OK	CREEK COUNTY
OK	CUSTER COUNTY
OK	DELAWARE COUNTY
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OK	KAY COUNTY
OK	KINGFISHER COUNTY
OK	KIOWA COUNTY
OK	LATIMER COUNTY
OK	LE FLORE COUNTY
OK	LINCOLN COUNTY
OK	LOGAN COUNTY
OK	LOVE COUNTY
OK	MCCLAIN COUNTY
OK	MCCURTAIN COUNTY
OK	MCINTOSH COUNTY
OK	MAJOR COUNTY
OK	MARSHALL COUNTY
OK	MAYES COUNTY
OK	MURRAY COUNTY
OK	MUSKOGEE COUNTY
OK	NOBLE COUNTY
OK	NOWATA COUNTY
OK	OKFUSKEE COUNTY
OK	OKLAHOMA COUNTY
OK	OKMULGEE COUNTY
OK	OSAGE COUNTY
OK	OTTAWA COUNTY
OK	PAWNEE COUNTY
OK	PAYNE COUNTY
OK	PITTSBURG COUNTY
OK	PONTOTOC COUNTY
OK	POTTAWATOMIE COUNTY
OK	PUSHMATAHA COUNTY
OK	ROGER MILLS COUNTY
OK	ROGERS COUNTY
OK	SEMINOLE COUNTY
OK	SEQUOYAH COUNTY
OK	STEPHENS COUNTY
OK	TILLMAN COUNTY
OK	TULSA COUNTY
OK	WAGONER COUNTY
OK	WASHINGTON COUNTY
OK	WASHITA COUNTY
OK	WOODS COUNTY
OK	WOODWARD COUNTY
OR	BENTON COUNTY
OR	CLACKAMAS COUNTY
OR	COLUMBIA COUNTY
OR	COOS COUNTY
OR	CROOK COUNTY
OR	DESCHUTES COUNTY
OR	DOUGLAS COUNTY
OR	GILLIAM COUNTY
OR	HOOD RIVER COUNTY
OR	JACKSON COUNTY
OR	JEFFERSON COUNTY
OR	JOSEPHINE COUNTY
OR	KLAMATH COUNTY
OR	LINCOLN COUNTY

STATE	COUNTY
OR	MARION COUNTY
OR	POLK COUNTY
OR	SHERMAN COUNTY
OR	UMATILLA COUNTY
OR	UNION COUNTY
OR	WASCO COUNTY
PA	ADAMS COUNTY
PA	ALLEGHENY COUNTY
PA	ARMSTRONG COUNTY
PA	BEAVER COUNTY
PA	BEDFORD COUNTY
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PA	BLAIR COUNTY
PA	BRADFORD COUNTY
PA	BUCKS COUNTY
PA	BUTLER COUNTY
PA	CAMBRIA COUNTY
PA	CAMERON COUNTY
PA	CARBON COUNTY
PA	CENTRE COUNTY
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PA	FAYETTE COUNTY
PA	FOREST COUNTY
PA	FRANKLIN COUNTY
PA	FULTON COUNTY
PA	GREENE COUNTY
PA	HUNTINGDON COUNTY
PA	INDIANA COUNTY
PA	JEFFERSON COUNTY
PA	JUNIATA COUNTY
PA	LACKAWANNA COUNTY
PA	LANCASTER COUNTY
PA	LAWRENCE COUNTY
PA	LEBANON COUNTY
PA	LEHIGH COUNTY
PA	LUZERNE COUNTY
PA	LYCOMING COUNTY
PA	MCKEAN COUNTY
PA	MERCER COUNTY
PA	MIFFLIN COUNTY
PA	MONROE COUNTY
PA	MONTGOMERY COUNTY
PA	MONTOUR COUNTY
PA	NORTHAMPTON COUNTY
PA	NORTHUMBERLAND COUNTY
PA	PERRY COUNTY
PA	PHILADELPHIA COUNTY
PA	PIKE COUNTY
PA	POTTER COUNTY
PA	SCHUYLKILL COUNTY
PA	SNYDER COUNTY
PA	SOMERSET COUNTY
PA	SULLIVAN COUNTY
PA	SUSQUEHANNA COUNTY
PA	TIOGA COUNTY
PA	UNION COUNTY

STATE	COUNTY
PA	VENANGO COUNTY
PA	WARREN COUNTY
PA	WASHINGTON COUNTY
PA	WAYNE COUNTY
PA	WESTMORELAND COUNTY
PA	WYOMING COUNTY
PA	YORK COUNTY
RI	BRISTOL COUNTY
RI	KENT COUNTY
RI	NEWPORT COUNTY
RI	PROVIDENCE COUNTY
RI	WASHINGTON COUNTY
SC	ABBEVILLE COUNTY
SC	AIKEN COUNTY
SC	ALLENDALE COUNTY
SC	ANDERSON COUNTY
SC	BAMBERG COUNTY
SC	BARNWELL COUNTY
SC	BEAUFORT COUNTY
SC	BERKELEY COUNTY
SC	CALHOUN COUNTY
SC	CHARLESTON COUNTY
SC	CHEROKEE COUNTY
SC	CHESTER COUNTY
SC	CHESTERFIELD COUNTY
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SC	HAMPTON COUNTY
SC	HORRY COUNTY
SC	JASPER COUNTY
SC	KERSHAW COUNTY
SC	LANCASTER COUNTY
SC	LAURENS COUNTY
SC	LEE COUNTY
SC	LEXINGTON COUNTY
SC	MCCORMICK COUNTY
SC	MARION COUNTY
SC	MARLBORO COUNTY
SC	NEWBERRY COUNTY
SC	OCONEE COUNTY
SC	ORANGEBURG COUNTY
SC	PICKENS COUNTY
SC	RICHLAND COUNTY
SC	SALUDA COUNTY
SC	SPARTANBURG COUNTY
SC	SUMTER COUNTY
SC	UNION COUNTY
SC	WILLIAMSBURG COUNTY
SC	YORK COUNTY
SD	BUTTE COUNTY
SD	CAMPBELL COUNTY
SD	DOUGLAS COUNTY
SD	EDMUNDS COUNTY
SD	HANSON COUNTY
SD	KINGSBURY COUNTY
SD	LYMAN COUNTY
SD	MEADE COUNTY

STATE	COUNTY
SD	PERKINS COUNTY
SD	SPINK COUNTY
SD	STANLEY COUNTY
SD	TURNER COUNTY
SD	UNION COUNTY
SD	WALWORTH COUNTY
TN	ANDERSON COUNTY
TN	BEDFORD COUNTY
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TN	BLEDSOE COUNTY
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TN	CHEATHAM COUNTY
TN	CHESTER COUNTY
TN	CLAIBORNE COUNTY
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TN	CROCKETT COUNTY
TN	CUMBERLAND COUNTY
TN	DAVIDSON COUNTY
TN	DECATUR COUNTY
TN	DEKALB COUNTY
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TN	FAYETTE COUNTY
TN	FENTRESS COUNTY
TN	FRANKLIN COUNTY
TN	GIBSON COUNTY
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TN	JACKSON COUNTY
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TN	LAUDERDALE COUNTY
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TN	LINCOLN COUNTY
TN	LOUDON COUNTY
TN	MCMINN COUNTY
TN	MCNAIRY COUNTY
TN	MACON COUNTY
TN	MADISON COUNTY
TN	MARION COUNTY
TN	MARSHALL COUNTY
TN	MAURY COUNTY

STATE	COUNTY
TN	MEIGS COUNTY
TN	MONROE COUNTY
TN	MONTGOMERY COUNTY
TN	MOORE COUNTY
TN	MORGAN COUNTY
TN	OBION COUNTY
TN	OVERTON COUNTY
TN	PERRY COUNTY
TN	PICKETT COUNTY
TN	POLK COUNTY
TN	PUTNAM COUNTY
TN	RHEA COUNTY
TN	ROANE COUNTY
TN	ROBERTSON COUNTY
TN	RUTHERFORD COUNTY
TN	SCOTT COUNTY
TN	SEQUATCHIE COUNTY
TN	SEVIER COUNTY
TN	SHELBY COUNTY
TN	SMITH COUNTY
TN	STEWART COUNTY
TN	SULLIVAN COUNTY

STATE	COUNTY
TN	SUMNER COUNTY
TN	TIPTON COUNTY
TN	TROUSDALE COUNTY
TN	UNICOI COUNTY
TN	UNION COUNTY
TN	VAN BUREN COUNTY
TN	WARREN COUNTY
TN	WASHINGTON COUNTY
TN	WAYNE COUNTY
TN	WEAKLEY COUNTY
TN	WHITE COUNTY
TN	WILLIAMSON COUNTY
TN	WILSON COUNTY
TX	ANDERSON COUNTY
TX	ANDREWS COUNTY
TX	ARANSAS COUNTY
TX	ATASCOSA COUNTY
TX	AUSTIN COUNTY
TX	BAILEY COUNTY
TX	BANDERA COUNTY
TX	BASTROP COUNTY
TX	BAYLOR COUNTY

STATE	COUNTY
TX	BEE COUNTY
TX	BELL COUNTY
TX	BEXAR COUNTY
TX	BLANCO COUNTY
TX	BOSQUE COUNTY
TX	BRAZORIA COUNTY
TX	BRAZOS COUNTY
TX	BREWSTER COUNTY
TX	BROOKS COUNTY
TX	BROWN COUNTY
TX	BURLESON COUNTY
TX	BURNET COUNTY
TX	CALDWELL COUNTY
TX	CALHOUN COUNTY
TX	CALLAHAN COUNTY
TX	CAMERON COUNTY
TX	CAMP COUNTY
TX	CARSON COUNTY
TX	CASS COUNTY
TX	CASTRO COUNTY
TX	CHAMBERS COUNTY
TX	CHEROKEE COUNTY

STATE	COUNTY
TX	CHILDRESS COUNTY
TX	CLAY COUNTY
TX	COKE COUNTY
TX	COLEMAN COUNTY
TX	COLLIN COUNTY
TX	COLORADO COUNTY
TX	COMAL COUNTY
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TX	CRANE COUNTY
TX	CROSBY COUNTY
TX	CULBERSON COUNTY
TX	DALLAS COUNTY
TX	DAWSON COUNTY
TX	DEAF SMITH COUNTY
TX	DENTON COUNTY
TX	DEWITT COUNTY
TX	DICKENS COUNTY
TX	DIMMIT COUNTY
TX	DONLEY COUNTY
TX	DUVAL COUNTY

STATE	COUNTY
TX	EASTLAND COUNTY
TX	ECTOR COUNTY
TX	ELLIS COUNTY
TX	EL PASO COUNTY
TX	FALLS COUNTY
TX	FANNIN COUNTY
TX	FAYETTE COUNTY
TX	FISHER COUNTY
TX	FLOYD COUNTY
TX	FORT BEND COUNTY
TX	FRANKLIN COUNTY
TX	FREESTONE COUNTY
TX	FRIO COUNTY
TX	GAINES COUNTY
TX	GALVESTON COUNTY
TX	GARZA COUNTY
TX	GILLESPIE COUNTY
TX	GOLIAD COUNTY
TX	GONZALES COUNTY
TX	GRAY COUNTY
TX	GRAYSON COUNTY
TX	GREGG COUNTY

STATE	COUNTY
TX	GUADALUPE COUNTY
TX	HALE COUNTY
TX	HAMILTON COUNTY
TX	HANSFORD COUNTY
TX	HARDEMAN COUNTY
TX	HARDIN COUNTY
TX	HARRIS COUNTY
TX	HARRISON COUNTY
TX	HASKELL COUNTY
TX	HAYS COUNTY
TX	HIDALGO COUNTY
TX	HILL COUNTY
TX	HOCKLEY COUNTY
TX	HOOD COUNTY
TX	HOPKINS COUNTY
TX	HOUSTON COUNTY
TX	HOWARD COUNTY
TX	HUDSPETH COUNTY
TX	HUNT COUNTY
TX	HUTCHINSON COUNTY
TX	JACK COUNTY
TX	JACKSON COUNTY

STATE	COUNTY
TX	JASPER COUNTY
TX	JEFFERSON COUNTY
TX	JIM HOGG COUNTY
TX	JIM WELLS COUNTY
TX	JOHNSON COUNTY
TX	JONES COUNTY
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TX	KLEBERG COUNTY
TX	KNOX COUNTY
TX	LAMAR COUNTY
TX	LAMB COUNTY
TX	LAMPASAS COUNTY
TX	LA SALLE COUNTY
TX	LAVACA COUNTY
TX	LEE COUNTY
TX	LEON COUNTY
TX	LIBERTY COUNTY
TX	LIPSCOMB COUNTY
TX	LIVE OAK COUNTY

STATE	COUNTY
TX	LLANO COUNTY
TX	LUBBOCK COUNTY
TX	MCLENNAN COUNTY
TX	MADISON COUNTY
TX	MARION COUNTY
TX	MARTIN COUNTY
TX	MASON COUNTY
TX	MATAGORDA COUNTY
TX	MAVERICK COUNTY
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TX	MIDLAND COUNTY
TX	MILAM COUNTY
TX	MITCHELL COUNTY
TX	MONTAGUE COUNTY
TX	MONTGOMERY COUNTY
TX	MOORE COUNTY
TX	MORRIS COUNTY
TX	NACOGDOCHES COUNTY
TX	NAVARRO COUNTY
TX	NEWTON COUNTY
TX	NOLAN COUNTY
TX	NUECES COUNTY

STATE	COUNTY
TX	OLDHAM COUNTY
TX	ORANGE COUNTY
TX	PALO PINTO COUNTY
TX	PANOLA COUNTY
TX	PARKER COUNTY
TX	PARMER COUNTY
TX	PECOS COUNTY
TX	POLK COUNTY
TX	POTTER COUNTY
TX	RAINS COUNTY
TX	RANDALL COUNTY
TX	RED RIVER COUNTY
TX	REEVES COUNTY
TX	REFUGIO COUNTY
TX	ROBERTSON COUNTY
TX	ROCKWALL COUNTY
TX	RUNNELS COUNTY
TX	RUSK COUNTY
TX	SAN AUGUSTINE COUNTY
TX	SAN JACINTO COUNTY
TX	SAN PATRICIO COUNTY
TX	SCHLEICHER COUNTY

STATE	COUNTY
TX	SCURRY COUNTY
TX	SHACKELFORD COUNTY
TX	SMITH COUNTY
TX	SOMERVELL COUNTY
TX	STARR COUNTY
TX	STEPHENS COUNTY
TX	STONEWALL COUNTY
TX	SUTTON COUNTY
TX	SWISHER COUNTY
TX	TARRANT COUNTY
TX	TAYLOR COUNTY
TX	TERRY COUNTY
TX	THROCKMORTON COUNTY
TX	TITUS COUNTY
TX	TOM GREEN COUNTY
TX	TRAVIS COUNTY
TX	TRINITY COUNTY
TX	TYLER COUNTY
TX	UPSHUR COUNTY
TX	UVALDE COUNTY
TX	VAL VERDE COUNTY
TX	VAN ZANDT COUNTY

STATE	COUNTY
TX	VICTORIA COUNTY
TX	WALKER COUNTY
TX	WALLER COUNTY
TX	WARD COUNTY
TX	WASHINGTON COUNTY
TX	WEBB COUNTY
TX	WHARTON COUNTY
TX	WHEELER COUNTY
TX	WICHITA COUNTY
TX	WILBARGER COUNTY
TX	WILLACY COUNTY
TX	WILLIAMSON COUNTY
TX	WILSON COUNTY
TX	WINKLER COUNTY
TX	WISE COUNTY
TX	WOOD COUNTY
TX	YOAKUM COUNTY
TX	YOUNG COUNTY
TX	ZAPATA COUNTY
TX	ZAVALA COUNTY
UT	BEAVER COUNTY
UT	BOX ELDER COUNTY

STATE	COUNTY
UT	CACHE COUNTY
UT	CARBON COUNTY
UT	DAGGETT COUNTY
UT	DAVIS COUNTY
UT	DUCHESNE COUNTY
UT	EMERY COUNTY
UT	GARFIELD COUNTY
UT	GRAND COUNTY
UT	IRON COUNTY
UT	JUAB COUNTY
UT	KANE COUNTY
UT	MILLARD COUNTY
UT	MORGAN COUNTY
UT	PIUTE COUNTY
UT	SALT LAKE COUNTY
UT	SANPETE COUNTY
UT	SEVIER COUNTY
UT	SUMMIT COUNTY
UT	TOOELE COUNTY
UT	UINTAH COUNTY
UT	UTAH COUNTY
UT	WASATCH COUNTY

STATE	COUNTY
UT	WASHINGTON COUNTY
UT	WAYNE COUNTY
UT	WEBER COUNTY
VT	ADDISON COUNTY
VT	CHITTENDEN COUNTY
VT	GRAND ISLE COUNTY
VT	LAMOILLE COUNTY
VT	RUTLAND COUNTY
VT	WASHINGTON COUNTY
VT	WINDHAM COUNTY
VT	WINDSOR COUNTY
VA	ALBEMARLE COUNTY
VA	ARLINGTON COUNTY
VA	BRUNSWICK COUNTY
VA	CHARLES CITY COUNTY
VA	CHESTERFIELD COUNTY
VA	DINWIDDIE COUNTY
VA	FAIRFAX COUNTY
VA	GREENSVILLE COUNTY
VA	HENRICO COUNTY
VA	HENRY COUNTY
VA	HIGHLAND COUNTY

STATE	COUNTY
VA	ISLE OF WIGHT COUNTY
VA	JAMES CITY COUNTY
VA	KING AND QUEEN COUNTY
VA	LOUDOUN COUNTY
VA	MECKLENBURG COUNTY
VA	MIDDLESEX COUNTY
VA	NOTTOWAY COUNTY
VA	PRINCE GEORGE COUNTY
VA	PRINCE WILLIAM COUNTY
VA	PULASKI COUNTY
VA	ROANOKE COUNTY
VA	SCOTT COUNTY
VA	SOUTHAMPTON COUNTY
VA	STAFFORD COUNTY
VA	SURRY COUNTY
VA	SUSSEX COUNTY
VA	WYTHE COUNTY
VA	YORK COUNTY
VA	BRISTOL CITY
VA	CHARLOTTESVILLE CITY
VA	CHESAPEAKE CITY
VA	COLONIAL HEIGHTS CITY

STATE	COUNTY
VA	DANVILLE CITY
VA	EMPORIA CITY
VA	FAIRFAX CITY
VA	FALLS CHURCH CITY
VA	FRANKLIN CITY
VA	HAMPTON CITY
VA	HOPEWELL CITY
VA	LYNCHBURG CITY
VA	MANASSAS PARK CITY
VA	MARTINSVILLE CITY
VA	NEWPORT NEWS CITY
VA	NORFOLK CITY
VA	PETERSBURG CITY
VA	POQUOSON CITY
VA	PORTSMOUTH CITY
VA	RICHMOND CITY
VA	ROANOKE CITY
VA	SUFFOLK CITY
VA	VIRGINIA BEACH CITY
VA	WILLIAMSBURG CITY
WA	ADAMS COUNTY
WA	ASOTIN COUNTY

STATE	COUNTY
WA	BENTON COUNTY
WA	CHELAN COUNTY
WA	CLALLAM COUNTY
WA	CLARK COUNTY
WA	COLUMBIA COUNTY
WA	COWLITZ COUNTY
WA	DOUGLAS COUNTY
WA	FRANKLIN COUNTY
WA	GARFIELD COUNTY
WA	GRANT COUNTY
WA	GRAYS HARBOR COUNTY
WA	ISLAND COUNTY
WA	JEFFERSON COUNTY
WA	KING COUNTY
WA	KITSAP COUNTY
WA	KITTITAS COUNTY
WA	KLICKITAT COUNTY
WA	LEWIS COUNTY
WA	LINCOLN COUNTY
WA	MASON COUNTY
WA	PACIFIC COUNTY
WA	PEND OREILLE COUNTY
WA	PIERCE COUNTY
WA	SAN JUAN COUNTY
WA	SKAGIT COUNTY
WA	SKAMANIA COUNTY
WA	SNOHOMISH COUNTY
WA	SPOKANE COUNTY
WA	STEVENS COUNTY
WA	THURSTON COUNTY
WA	WAHKIAKUM COUNTY
WA	WALLA WALLA COUNTY
WA	WHATCOM COUNTY
WA	WHITMAN COUNTY
WA	YAKIMA COUNTY
WV	BARBOUR COUNTY
WV	BERKELEY COUNTY
WV	BOONE COUNTY
WV	BRAXTON COUNTY
WV	BROOKE COUNTY
WV	CABELL COUNTY
WV	CALHOUN COUNTY
WV	CLAY COUNTY
WV	DODDRIDGE COUNTY
WV	FAYETTE COUNTY
WV	GILMER COUNTY
WV	GREENBRIER COUNTY
WV	HANCOCK COUNTY
WV	HARDY COUNTY
WV	HARRISON COUNTY
WV	JACKSON COUNTY
WV	JEFFERSON COUNTY
WV	KANAWHA COUNTY
WV	LEWIS COUNTY
WV	LINCOLN COUNTY
WV	LOGAN COUNTY
WV	MCDOWELL COUNTY
WV	MARION COUNTY
WV	MARSHALL COUNTY
WV	MASON COUNTY
WV	MERCER COUNTY
WV	MINGO COUNTY
WV	MONONGALIA COUNTY
WV	MONROE COUNTY
WV	MORGAN COUNTY
WV	NICHOLAS COUNTY

STATE	COUNTY
WV	OHIO COUNTY
WV	PENDLETON COUNTY
WV	PLEASANTS COUNTY
WV	PRESTON COUNTY
WV	PUTNAM COUNTY
WV	RALEIGH COUNTY
WV	RANDOLPH COUNTY
WV	ROANE COUNTY
WV	SUMMERS COUNTY
WV	TAYLOR COUNTY
WV	TUCKER COUNTY
WV	TYLER COUNTY
WV	UPSHUR COUNTY
WV	WAYNE COUNTY
WV	WEBSTER COUNTY
WV	WIRT COUNTY
WV	WOOD COUNTY
WV	WYOMING COUNTY
WI	ADAMS COUNTY
WI	BARRON COUNTY
WI	BAYFIELD COUNTY
WI	BROWN COUNTY
WI	BUFFALO COUNTY
WI	BURNETT COUNTY
WI	CALUMET COUNTY
WI	CHIPPEWA COUNTY
WI	CLARK COUNTY
WI	COLUMBIA COUNTY
WI	DANE COUNTY
WI	DODGE COUNTY
WI	DOOR COUNTY
WI	DOUGLAS COUNTY
WI	DUNN COUNTY
WI	EAU CLAIRE COUNTY
WI	FOND DU LAC COUNTY
WI	GRANT COUNTY
WI	GREEN COUNTY
WI	GREEN LAKE COUNTY
WI	IOWA COUNTY
WI	JACKSON COUNTY
WI	JEFFERSON COUNTY
WI	JUNEAU COUNTY
WI	KENOSHA COUNTY
WI	KEWAUNEE COUNTY
WI	LA CROSSE COUNTY
WI	LAFAYETTE COUNTY
WI	LINCOLN COUNTY
WI	MANITOWOC COUNTY
WI	MARATHON COUNTY
WI	MARINETTE COUNTY
WI	MARQUETTE COUNTY
WI	MILWAUKEE COUNTY
WI	MONROE COUNTY
WI	OCONTO COUNTY
WI	ONEIDA COUNTY
WI	OUTAGAMIE COUNTY
WI	OZAUKEE COUNTY
WI	PEPIN COUNTY
WI	PIERCE COUNTY
WI	POLK COUNTY
WI	PORTAGE COUNTY
WI	PRICE COUNTY
WI	RACINE COUNTY
WI	RICHLAND COUNTY
WI	ROCK COUNTY
WI	RUSK COUNTY

STATE	COUNTY
WI	ST. CROIX COUNTY
WI	SAUK COUNTY
WI	SAWYER COUNTY
WI	SHAWANO COUNTY
WI	SHEBOYGAN COUNTY
WI	TAYLOR COUNTY
WI	TREMPEALEAU COUNTY
WI	VERNON COUNTY
WI	WALWORTH COUNTY
WI	WASHBURN COUNTY
WI	WASHINGTON COUNTY
WI	WAUKESHA COUNTY
WI	WAUPACA COUNTY
WI	WAUSHARA COUNTY
WI	WINNEBAGO COUNTY
WI	WOOD COUNTY
WY	ALBANY COUNTY
WY	BIG HORN COUNTY
WY	CARBON COUNTY
WY	FREMONT COUNTY
WY	GOSHEN COUNTY
WY	LARAMIE COUNTY
WY	NIOBRARA COUNTY
WY	PARK COUNTY
WY	SHERIDAN COUNTY
WY	SWEETWATER COUNTY
WY	TETON COUNTY
WY	UINTA COUNTY
WY	WASHAKIE COUNTY
WY	WESTON COUNTY
PR	ADJUNTAS MUNICIPIO
PR	AGUADA MUNICIPIO
PR	AGUADILLA MUNICIPIO
PR	AGUAS BUENAS MUNICIPIO
PR	AIBONITO MUNICIPIO
PR	ANASCO MUNICIPIO
PR	ARECIBO MUNICIPIO
PR	ARROYO MUNICIPIO
PR	BARCELONETA MUNICIPIO
PR	BARRANQUITAS MUNICIPIO
PR	BAYAMON MUNICIPIO
PR	CABO ROJO MUNICIPIO
PR	CAGUAS MUNICIPIO
PR	CAMUY MUNICIPIO
PR	CANOVANAS MUNICIPIO
PR	CAROLINA MUNICIPIO
PR	CATANO MUNICIPIO
PR	CAYEY MUNICIPIO
PR	CEIBA MUNICIPIO
PR	CIALES MUNICIPIO
PR	CIDRA MUNICIPIO
PR	COAMO MUNICIPIO
PR	COMERIO MUNICIPIO
PR	COROZAL MUNICIPIO
PR	CULEBRA MUNICIPIO
PR	DORADO MUNICIPIO
PR	FAJARDO MUNICIPIO
PR	FLORIDA MUNICIPIO
PR	GUANICA MUNICIPIO
PR	GUAYAMA MUNICIPIO
PR	GUAYANILLA MUNICIPIO
PR	GUAYNABO MUNICIPIO
PR	GURABO MUNICIPIO
PR	HATILLO MUNICIPIO
PR	HORMIGUEROS MUNICIPIO
PR	HUMACAO MUNICIPIO

STATE	COUNTY
PR	ISABELA MUNICIPIO
PR	JAYUYA MUNICIPIO
PR	JUANA DIAZ MUNICIPIO
PR	JUNCOS MUNICIPIO
PR	LAJAS MUNICIPIO
PR	LARES MUNICIPIO
PR	LAS MARIAS MUNICIPIO
PR	LAS PIEDRAS MUNICIPIO
PR	LOIZA MUNICIPIO
PR	LUQUILLO MUNICIPIO
PR	MANATI MUNICIPIO
PR	MARICAO MUNICIPIO
PR	MAUNABO MUNICIPIO
PR	MAYAGUEZ MUNICIPIO
PR	MOCA MUNICIPIO
PR	MOROVIS MUNICIPIO
PR	NAGUABO MUNICIPIO
PR	NARANJITO MUNICIPIO
PR	OROCOVIS MUNICIPIO
PR	PATILLAS MUNICIPIO
PR	PENUELAS MUNICIPIO
PR	PONCE MUNICIPIO
PR	QUEBRADILLAS MUNICIPIO
PR	RINCON MUNICIPIO
PR	RIO GRANDE MUNICIPIO
PR	SABANA GRANDE MUNICIPIO
PR	SALINAS MUNICIPIO
PR	SAN GERMAN MUNICIPIO
PR	SAN JUAN MUNICIPIO
PR	SAN LORENZO MUNICIPIO
PR	SAN SEBASTIAN MUNICIPIO
PR	SANTA ISABEL MUNICIPIO
PR	TOA ALTA MUNICIPIO
PR	TOA BAJA MUNICIPIO
PR	TRUJILLO ALTO MUNICIPIO
PR	UTUADO MUNICIPIO
PR	VEGA ALTA MUNICIPIO
PR	VEGA BAJA MUNICIPIO
PR	VIEQUES MUNICIPIO
PR	VILLALBA MUNICIPIO
PR	YABUCOA MUNICIPIO
PR	YAUCO MUNICIPIO
VI	ST. CROIX ISLAND
VI	ST. THOMAS ISLAND

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 23-562
Released: June 29, 2023

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES COMMENT DATES FOR TCPA CONSENT NOTICE OF PROPOSED RULEMAKING

CG Docket No. 02-278

Comment Date: July 31, 2023
Reply Comment Date: August 14, 2023

On June 9, 2023, the Federal Communications Commission (Commission) released the *TCPA Consent NPRM*, in which the Commission proposed new rules to strengthen consumers' ability to revoke consent to receive both robocalls and robotexts.[1] On June 29, 2023, a summary of the *TCPA Consent NPRM* was published in the Federal Register.[2]

The *TCPA Consent NPRM* sets deadlines for filing comments and reply comments at 30 days and 45 days after publication in the Federal Register, respectively.[3] Accordingly, comments must be filed by **July 31, 2023**, and replies must be filed by **August 14, 2023**.

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

For further information, contact Richard D. Smith, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (717) 338-2797 (voice) or e-mail at: Richard.Smith@fcc.gov.

- FCC -

[1] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Notice of Proposed Rulemaking, FCC 23-49 (June 9, 2023), https://docs.fcc.gov/public/attachments/FCC-23-49A1.pdf.

[2] Federal Communications Commission, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Proposed Rule, 88 Fed. Reg. 42034 (June 29, 2023).

[3] *See TCPA Consent NPRM* at para. 37.

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 23-563
Released: June 30, 2023

ENFORCEMENT BUREAU REMINDS MVPDS OF 2023 FCC FORM 396-C DEADLINE

Pursuant to section 76.77 of the Commission's rules, 47 CFR § 76.77, a multichannel video program distributor (MVPD) employment unit with six or more full-time employees must file an FCC Form 396-C, Multichannel Video Programming Distributor EEO Program Annual Report, by September 30 each year. By this Notice, we remind MVPDs of this recurring obligation, which falls this year on Monday, October 2, 2023.[1] The Form 396-C must be submitted via the EEO filing portal in the Cable Operations and Licensing System (COALS), which can be accessed at https://fccprod.servicenowservices.com/coals.[2]

Additionally, we identify in the following pages those employment units that must complete the Supplemental Investigation Sheet (SIS) of the Form 396-C this year. Moreover, Section I of the COALS Form 396-C, labeled "Supplemental Investigation Sheet", automatically displays a check mark for those filers who are required to submit the SIS. SIS filers should also take note of the following requirements:

- Part I: One job description must be provided for this category: Sales Workers.
- Part II: Only questions 2, 3 and 6 must be answered.
- Part III: The employment unit's 2023 EEO Public File Report covering the previous 12 months must be attached.

Questions concerning the Form 396-C can be directed to EEO staff at EB-EEO@fcc.gov or (202) 418-1450. For technical assistance with COALS, please contact coals_help@fcc.gov and for help with CORES matters, direct questions to COREShelp@fcc.gov.

- FCC -

[1] Because September 30, 2023, falls on a weekend, the deadline is moved to the next business day, Monday, October 2, 2023. *See* 47 CFR § 1.4.

[2] Please note that COALS requires a Commission Registration System (CORES) username and password to which authority for one or more Federal Registration Numbers (FRNs) has been delegated. To manage CORES usernames and passwords, please visit https://apps.fcc.gov/cores/userLogin.do. For additional information regarding FRNs and the CORES system, please visit https://www.fcc.gov/licensing-databases/commission-registration-system-fcc.

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

We have estimated that each response to this collection of information will take from 0.166 to 2.5 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 burden estimate, or on how we can improve the collection and reduce the burden it causes you, please e-mail them to pra@fcc.gov or send them to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-1033), Washington, DC 20554. Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-1033.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

2023 FORM 396-C
MVPD EMPLOYMENT UNITS SUBJECT TO SUPPLEMENTAL INVESTIGATION

#	EMP. UNIT ID	MSO/OPERATOR NAME	COUNTY	STATE
1.	10572	CABLEVISION SYSTEMS CORP.	Essex	NJ
2.	12059	SUDDENLINK COMMUNICATIONS	Potter	TX
3.	12053	SUDDENLINK COMMUNICATIONS	Wood	WV
4.	12055	SUDDENLINK COMMUNICATIONS	Logan	WV
5.	11972	SUDDENLINK COMMUNICATIONS	Deaf Smith	TX
6.	11971	SUDDENLINK COMMUNICATIONS	Cooke	TX
7.	11991	SUDDENLINK COMMUNICATIONS	Lincoln	LA
8.	10862	CABLE ONE, INC.	Canyon	ID
9.	10856	CABLE ONE, INC.	Bannock	ID
10.	12183	CABLE ONE, INC.	Montgomery	IL
11.	3432	CABLE ONE, INC.	Sandoval	NM
12.	659	CABLE ONE, INC.	Grenada	MS
13.	11819	CABLE ONE, INC.	Scott	MO
14.	3925	CABLE ONE, INC.	Navajo	AZ
15.	4489	CABLE ONE, INC.	Jackson	OK
16.	843	CABLE ONE, INC.	Harrison	MS
17.	3924	CABLE ONE, INC.	Navajo	AZ
18.	342	CABLE ONE, INC.	Gila	AZ
19.	356	CABLE ONE, INC.	Bowie	TX
20.	5302	CABLE ONE, INC.	Woodbury	IA
21.	12722	CABLE ONE, INC.	Vermillion	IN
22.	1179	CABLE ONE, INC.	Beckham	OK
23.	990460	GOOGLE FIBER INC.	Santa Clara	CA
24.	13546	CHARTER COMMUNICATIONS	Cuyahoga	OH
25.	13545	CHARTER COMMUNICATIONS	Cumberland	ME
26.	2169	ARMSTRONG UTILITIES, INC.	Crawford	PA
27.	6068	ARMSTRONG UTILITIES, INC.	Medina	OH
28.	3585	ARMSTRONG UTILITIES, INC.	Lawrence	OH
29.	828209	COGECO US (DELMAR), LLC D/B/A BREEZELINE	St. Mary’s	MD
30.	12297	GRANDE COMMUNICATIONS NETWORKS LLC	Ector	TX

2023 FORM 396-C

MVPD EMPLOYMENT UNITS SUBJECT TO SUPPLEMENTAL INVESTIGATION

#	EMP. UNIT ID	MSO/OPERATOR NAME	COUNTY	STATE
31.	13553	CHARTER COMMUNICATIONS	Jefferson	AL
32.	13558	CHARTER COMMUNICATIONS	Orange	CA
33.	13556	CHARTER COMMUNICATIONS	Erie	NY
34.	13555	CHARTER COMMUNICATIONS	Pinellas	FL
35.	13554	CHARTER COMMUNICATIONS	Hillsborough	FL
36.	12295	GRANDE COMMUNICATIONS NETWORKS LLC	Midland	TX
37.	4449	ARMSTRONG UTILITIES, INC.	Ashland	OH
38.	13552	CHARTER COMMUNICATIONS	Worcester	MA
39.	13557	CHARTER COMMUNICATIONS	Milwaukee	WI
40.	13543	CHARTER COMMUNICATIONS	New York	NY
41.	10705	COGECO US (DELMAR), LLC D/B/A BREEZELINE	Middlesex	VA
42.	13550	CHARTER COMMUNICATIONS	Horry	SC
43.	13551	CHARTER COMMUNICATIONS	Travis	TX
44.	13547	CHARTER COMMUNICATIONS	Jackson	OR
45.	13548	CHARTER COMMUNICATIONS	San Diego	CA
46.	13549	CHARTER COMMUNICATIONS	Los Angeles	CA
47.	10588	ARMSTRONG UTILITIES, INC.	Butler	PA
48.	HQ452	CHARTER COMMUNICATIONS	Mecklenburg	NC
49.	12002	ASTOUND BROADBAND	Contra Costa	CA
50.	13544	CHARTER COMMUNICATIONS	Tarrant	TX
51.	11965	WAVEDIVISION HOLDINGS LLC	King	WA
52.	3507	ARMSTRONG UTILITIES, INC.	Butler	PA
53.	4587	ARMSTRONG UTILITIES, INC.	Fayette	PA
54.	990171	MIDCONTINENT COMMUNICATIONS	Hennepin	MN
55.	1605	MIDCONTINENT COMMUNICATIONS	Burleigh	ND
56.	11997	COX COMMUNICATIONS, INC.	Washington	AR
57.	599970	Kimberly K Connor	Houston	MN
58.	1503	MIDCONTINENT COMMUNICATIONS	Minnehaha	SD
59.	11521	COMCAST CABLE COMMUNICATIONS, LLC.	Middlesex	MA
60.	11504	COMCAST CABLE COMMUNICATIONS, LLC.	Baltimore City	MD
61.	11550	COMCAST CABLE COMMUNICATIONS	New Castle	DE

2023 FORM 396-C

MVPD EMPLOYMENT UNITS SUBJECT TO SUPPLEMENTAL INVESTIGATION

#	EMP. UNIT ID	MSO/OPERATOR NAME	COUNTY	STATE
62.	8503	COMCAST CABLE COMMUNICATIONS, LLC	Baltimore City	MD
63.	9778	COMCAST CABLE COMMUNICATIONS, LLC	Hartford	CT
64.	11624	COMCAST CABLE COMMUNICATIONS	Anne Arundel	MD
65.	2577	COX COMMUNICATIONS INC	Alachua	FL
66.	11594	COMCAST CABLE COMMUNICATIONS	Allegheny	PA
67.	12048	RB3, LLC	Ector	TX
68.	11927	COMCAST CABLE COMMUNICATIONS, LLC	New York	PA
69.	11524	COMCAST CABLE COMMUNICATION	Broward	FL
70.	11904	COMCAST CABLE COMMUNICATION	Hardin	KY
71.	1857	COMCAST CABLE COMMUNICATIONS	Leon	FL
72.	11588	COMCAST CABLE COMMUNICATIONS, LLC	Kent	MI
73.	11919	COMCAST CABLE COMMUNICATIONS, LLC.	Gwinnett	PA
74.	11902	COMCAST CABLE COMMUNICATION	Monroe	FL
75.	11936	COMCAST CABLE COMMUNICATIONS, LLC	DuPage	IL
76.	11542	COMCAST CABLE COMMUNICATIONS, LLC	Cook	IL
77.	11829	COLUMBIA POWER AND WATER SYSTEMS	Maury	TN
78.	11584	COMCAST CABLE COMMUNICATION	Indian River	FL
79.	11523	COMCAST CABLE COMMUNICATION	Broward	FL
80.	11577	COMCAST CABLE COMMUNICATIONS, LLC.	Gwinnett	GA
81.	12754	BRC DUNCANNON	Perry	PA
82.	12761	BRC POCONO SUMMIT	Monroe	PA
83.	11921	COMCAST CABLE COMMUNICATIONS, LLC.	Montgomery	PA
84.	11545	COMCAST CABLE COMMUNICATIONS, LLC	Cook	IL
85.	12760	BRC NEWBERRY	York	PA
86.	11548	COMCAST CABLE COMMUNICATIONS, LLC	Cook	IL
87.	7314	COMCAST CABLE COMMUNICATIONS, LLC	Wayne	MI
88.	12762	BRC STROUDSBURG	Monroe	PA
89.	11688	COMCAST CABLE COMMUNICATIONS, LLC	Williamson	IL
90.	12763	BRC TUNKHANNOCK	Wyoming	PA
91.	1575	CABLE ONE, INC.	Comanche	OK
92.	1435	CABLE ONE, INC.	Franklin	MO

2023 FORM 396-C

MVPD EMPLOYMENT UNITS SUBJECT TO SUPPLEMENTAL INVESTIGATION

#	EMP. UNIT ID	MSO/OPERATOR NAME	COUNTY	STATE
93.	7399	HORRY TELEPHONE COOPERATIVE, INC.	Horry	SC
94.	11855	BCI ALLEGIANCE, LLC	Pittsburg	OK
95.	12769	VYVE BROADBAND J, LLC.	Coffee	GA
96.	990060	SERVICE ELECTRIC CABLEVISION, INC.	Lehigh	PA
97.	11825	CENTRACOM INTERACTIVE	Sanpete	UT
98.	12750	Plant Tiftnet, Inc.	Tifton	GA
99.	12745	ORLANDO TELEPHONE COMPANY, INC	Orange	FL
100.	4680	COMCAST CABLE COMMUNICATION	Charleston	SC
101.	8019	COMCAST CABLE COMMUNICATIONS	Camden	NJ
102.	11895	COMCAST CABLE COMMUNICATIONS, LLC.	Bucks	PA
103.	726	COMCAST CABLE COMMUNICATIONS	Bucks	PA
104.	11590	COMCAST CABLE COMMUNICATIONS	King	WA
105.	12152	COMCAST CABLE COMMUNICATIONS	Baltimore City	MD
106.	12806	COMCAST CABLE COMMUNICATIONS	Middlesex	MA
107.	5589	COMCAST CABLE COMMUNICATIONS	Bucks	PA
108.	9344	NORTHLAND CABLE TELEVISION, INC	Toombs	GA
109.	5637	NORTHLAND CABLE TELEVISION, INC	Oconee	SC
110.	990186	NORTHLAND CABLE TELEVISION INC	King	WA
111.	1124	NORTHLAND CABLE TELEVISION, INC	Greenwood	SC
112.	EUID00016	Allo Communications	Weld	CO
113.	EUID00041	Allo Communications	Weld	CO
114.	EUID00033	Allo Communications	Wayne	NE
115.	EUID00017	Allo Communications	Scotts Bluff	NE
116.	EUID00034	Allo Communications	Seward	NE
117.	1231	CABLE ONE, INC.	Alamosa	CO
118.	EUID00043	GRANDE COMMUNICATIONS NETWORKS LLC	Brown	TX
119.	EUID00008	KNOLOGY, INC	Houston	AL
120.	EUID00049	Allo Communications	Richmond City	VA
121.	EUID99015	Allo Communications	Lancaster	NE
122.	EUID00023	Allo Communications	Madison	NE
123.	EUID00042	Mediacom Communications Corporation	Stephenson	IL

2023 FORM 396-C

MVPD EMPLOYMENT UNITS SUBJECT TO SUPPLEMENTAL INVESTIGATION

#	EMP. UNIT ID	MSO/OPERATOR NAME	COUNTY	STATE
124.	EUID00014	KNOLOGY, INC	Troup	GA
125.	EUID00010	KNOLOGY, INC	Coweta	GA
126.	EUID00029	Allo Communications	Mohave	AZ
127.	EUID00011	KNOLOGY, INC	Chambers	AL
128.	EUID00037	Allo Communications	York	NE
129.	EUID00032	Allo Communications	Cherry	NE
130.	EUID00020	Allo Communications	Lincoln	NE
131.	830359	Arthur Mutual Telephone Company	Defiance	OH
132.	EUID00044	GRANDE COMMUNICATIONS NETWORKS LLC	Harris	TX
133.	EUID00030	Allo Communications	Morgan	CO
134.	EUID00048	New Knoxville Telephone Company	Auglaize	OH
135.	EUID99013	United Services, Inc.	Nodaway	MO
136.	10944	Telapex, Inc.	Pike	AL
137.	EUID00031	Allo Communications	Keith	NE
138.	EUID00045	GRANDE COMMUNICATIONS NETWORKS LLC	Harris	TX
139.	EUID 00026	Allo Communications	Adams	NE
140.	EUID00046	TDStelecom	Dane	WI
141.	EUID00047	TDStelecom	Dane	WI
142.	EUID00036	Vernon Communications Cooperative	Vernon	WI
143.	EUID00038	Allo Communications	Box Butte	NE
144.	EUID00035	Allo Communications	Cheyenne	NE
145.	EUID00039	Allo Communications	Weld	CO
146.	EUID 00025	Allo Communications	Chase	NE
147.	12883	MI Connection Communications System	Moorsville	NC
148.	EUID00021	Allo Communications	Buffalo	NE
149.	000000	Red River Rural Telephone Association	Richland	ND
150.	EUID00019	Allo Communications	Mohave	AZ
151.	EUID00027	Allo Communications	Dodge	NE
152.	0842	Carolina Mountain Cablevision, Inc.	Haywood	NC
153.	EUID00040	Allo Communications	Summit	CO
154.	EUID99006	Norwood Light Department Broadband Division	Norfolk	MA

2023 FORM 396-C

MVPD EMPLOYMENT UNITS SUBJECT TO SUPPLEMENTAL INVESTIGATION

#	EMP. UNIT ID	MSO/OPERATOR NAME	COUNTY	STATE
155.	999	ELEVATE FIBER	Montrose	CO
156.	862861	Sierra Nevada Communications	Tuolumne	CA
157.	7239	Shrewsbury Community Cablevision	Worcester	MA
158.	EUID00024	Allo Communications	Hall	NE
159.	EUID00028	Allo Communications	Platte	NE
160.	EUID99012	CCI Systems, Inc.	Dickinson	MI

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

In the Matter of	)	
	)	
PTC-220, LLC, Request for Modification of Rule Waivers to Deploy Railroad Safety Systems in the 220 MHz Band	)	Lead ULS File No. 0009965899

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 2023 **Released: June 29, 2023**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

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APPENDIX – Modified Rule Waivers

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address the request of PTC-220, LLC (PTC-220)—a consortium of the nation's seven Class I freight railroads[1]—for modification of six existing 220 MHz Band service rule waivers.[2] The Wireless Telecommunications Bureau (Bureau) originally granted PTC-220 the rule waivers to enable deployment of Congressionally-mandated Positive Train Control (PTC) safety systems in the 220 MHz Band.[3] PTC-220 states that its member railroads have implemented interoperable PTC systems as required by Congress, and PTC-220 now requests modification of the rule waivers. Specifically, PTC-220 requests that we expand the scope of the waiver relief to enable the deployment of additional (i.e., non-PTC) railroad safety systems.[4] For the reasons that follow, we grant PTC-220's request subject to the terms and conditions enumerated below. Today's action will enable U.S. freight, intercity passenger (including Amtrak), and commuter railroads to deploy life- and property-saving[5] safety systems using PTC-220's extensive 220 MHz Band spectrum holdings[6] across the nation.

II. BACKGROUND

2. *Positive Train Control*. The Rail Safety Improvement Act of 2008, as amended by the Positive Train Control Enforcement and Implementation Act of 2015 (together, the Rail Safety Act), required most U.S. freight, intercity passenger, and commuter railroads to install and operate interoperable PTC systems by December 31, 2018.[7] PTC systems are designed to reduce the risk of human-error rail accidents, by "prevent[ing] train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position."[8]

3. Forty one railroads are subject to the PTC mandate, including PTC-220's seven members, Amtrak, 28 commuter railroads, and five other freight railroads that host regularly scheduled intercity or

[1] PTC-220's seven member railroads include: BNSF Railway Company; Canadian National Railway Company; Canadian Pacific Railway Company; CSX Corporation; Kansas City Southern; Norfolk Southern Corporation; and Union Pacific Corporation. U.S. railroads are designated as Class I, II, or III, according to annual revenue criteria.

[2] Request for Modification of Waivers Associated with PTC-220's 220 MHz Band Licenses (March 23, 2022) (on file under lead ULS File No. 0009965899 (WQSK949)) (Waiver Modification Request); Letter from Michele Farquhar, Counsel to PTC-220, to Marlene H. Dortch, Secretary, FCC (Sept. 7, 2022) (on file under lead ULS File No. 0009965899 (WQSK949)) (Waiver Modification Request Supplement). The Appendix to this Order includes a comprehensive list of file numbers, call signs, and corresponding rule waivers sought by PTC-220.

[3] *PTC-220, LLC, Request for Waiver to Facilitate Deployment of Positive Train Control Systems*, WT Docket No. 13-59, Memorandum Opinion and Order, 30 FCC Rcd 2281 (WTB MD 2015) (*2015 Waiver Order*) (waiving 47 CFR §§ 90.723(f) (coordination requirements) and 90.729(b) (antenna height and power limits)); *Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules*, WT Docket No. 08-256, Memorandum Opinion and Order, 24 FCC Rcd 8537 (WTB 2009) (*2009 Waiver Order*) (waiving 47 CFR §§ 90.713(a) and 90.717(b) (commercial use restrictions), 90.715 (base/mobile band configuration), and 90.735 (station identification requirements)).

[4] *See generally* Waiver Modification Request.

[5] *See* 47 U.S.C. § 151 (establishing the Commission for the "purpose of promoting safety of life and property through the use of wire and radio communications").

[6] Waiver Modification Request, Appendix A (listing PTC-220's 220 MHz Band licenses and leases).

[7] Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), *amended by* Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015).

[8] 49 U.S.C. § 20157(i)(5). The U.S. rail industry chose to implement PTC through wireless networks that use radio spectrum. These networks have the capacity to enable real-time information sharing between trains, rail wayside devices, and "back office" applications, regarding train movement authorities, speed restrictions, train position and speed, and the state of signal and switch devices.

commuter rail passenger service.[9] Four railroads timely met the December 31, 2018, PTC implementation deadline.[10] As the Rail Safety Act permits, the remaining railroads subject to the PTC mandate, including PTC-220's seven member railroads, requested up to a two-year extension, until December 31, 2020, to implement PTC.[11] The Federal Railroad Administration (FRA) found that these railroads met the statutory criteria necessary to qualify for an extended implementation schedule and, subsequently, found that they met their extended PTC deadlines.[12]

4. *PTC-220*. PTC-220 was formed to acquire and manage the necessary spectrum resources for its member railroads to deploy interoperable PTC systems across the United States.[13] PTC-220 has acquired spectrum in both the 220 MHz Band and, more recently, in the adjacent Automated Maritime Telecommunications System (AMTS) Band to implement PTC. PTC-220 also leases its spectrum to numerous other railroads, including passenger and commuter railroads, to enable their PTC implementation.[14]

5. *220 MHz Band Licenses*. PTC-220 holds thirty-one 220 MHz Band geographic-area licenses (including Phase I and Phase II Nationwide, Regional Economic Area Group (REAG), and Economic Area licenses)[15] for its members and their tenant railroads to deploy PTC.[16] PTC-220 also leases spectrum for its members to deploy PTC under six 220 MHz Band REAG licenses held by the

[9] U.S. Department of Transportation (USDOT), Federal Railroad Administration (FRA), *Positive Train Control (PTC) Overview* (last updated Dec. 12, 2022), https://railroads.dot.gov/train-control/ptc/positive-train-control-ptc (last visited Jan. 26, 2023) (FRA PTC Overview).

[10] USDOT, *Statement on Positive Train Control Implementation* (last updated Dec. 31, 2018), https://www.transportation.gov/briefing-room/statement-positive-train-control-implementation (last visited Jan. 26, 2023).

[11] *Id*.

[12] FRA PTC Overview. The FRA is responsible for approving each railroad's PTC system, including design, testing, and implementation and for ensuring compliance with the Rail Safety Act and FRA regulations implementing that statute. USDOT, FRA, *Positive Train Control (PTC) Information (R&D) Summary* (last updated Nov. 13, 2019), https://www.fra.dot.gov/Page/P0152 (last visited Jan. 26, 2023).

[13] Waiver Modification Request at 2. The Rail Safety Act requires U.S. railroads to deploy interoperable PTC systems so that when a railroad enters another's territory as a tenant, it can safely use the host rail's PTC system where required. 49 U.S.C. § 20157(a)(2)(A)(i)(1) (a railroad "must provide for interoperability of the system with the movements of trains of other railroad carriers over its lines"). The Rail Safety Act defines "interoperability" as "the ability to control locomotives of the host railroad and tenant railroad to communicate with and respond to the positive train control system, including uninterrupted movements over property boundaries." *Id*. § 20157(i)(3).

[14] For example, under call sign WPOI701, PTC-220 has over 50 active spectrum manager leases. *See, e.g.*, ULS Lease ID Nos. L000019677 (Peninsula Corridor Joint Powers Board (CALTRAIN)); L000010093 (Southern California Regional Rail Authority (SCRRA/Metrolink)); L000018163 (Penn Central Communications (Conrail)); L000017508 (Northeast Illinois Regional Commuter Railroad Corporation (Metra)); L000020184 (National Railroad Passenger Corporation (AMTRAK)); L000026624 (Massachusetts Bay Transportation Authority); L000043044 (Utah Railway Company); L000046404 (Fort Worth Transportation Authority (Trinity Metro)); L000043219 (Florida East Coast Railway). *See also* ULS Lease ID No. L000025125, File Nos. 6059QASL19 (subleasing WPOI701 to Kansas City Terminal Railway Company), 6056QASL19 (subleasing WPOI701 to Dallas Area Rapid Transit).

[15] 220 MHz Band licenses initially authorized from applications filed on or before May 24, 1991, are referred to as Phase I licenses. 47 CFR § 90.701(b). 220 MHz Band licenses initially authorized from applications filed after May 24, 1991, are referred to as Phase II licenses. 47 CFR § 90.701(c).

[16] Waiver Modification Request, Appendix A (listing PTC-220's 220 MHz Band licenses).

Association of American Railroads (AAR Spectrum Leases).[17]

6. *2009 Waiver Order*. In the *2009 Waiver Order*, the Bureau granted PTC-220 a waiver of four 220 MHz Band operational rules to enable deployment of PTC systems in the 220 MHz Band.[18] The four rules include: sections 90.713(a) and 90.717(b) (restricting certain 220 MHz Band nationwide licenses to commercial use); section 90.715(a) (assigning base station frequencies from the 220-221 MHz band segment and mobile station frequencies from the 221-222 MHz band segment); and section 90.735 (requiring station identification).[19]

7. The Bureau found that waiver of section 90.715's base/mobile configuration requirements would serve the public interest by enabling PTC deployment "in highly congested areas shared by multiple freight and commuter railroads."[20] It also found that waiver of the commercial use restrictions contained in sections 90.713(a) and 90.717(b) would promote the public interest by allowing PTC-220 to implement a PTC system on a private basis.[21] The Bureau emphasized that the relief was "inextricably tied" to the PTC mandate and the substantial public interest benefits that would accrue from a nationwide interoperable rail safety network.[22] Following grant of the four rule waivers, PTC-220 acquired numerous additional 220 MHz Band licenses. The Bureau extended the 2009 rule waivers to these subsequently-acquired licenses to enable PTC deployment.[23]

8. *2015 Waiver Order*. In the *2015 Waiver Order*, the Bureau granted PTC-220 a waiver of two additional rules to facilitate deployment of PTC systems in the 220 MHz Band:[24] section 90.729(b), which prohibits licensees from operating stations in the 221-222 MHz band segment with an effective radiated power (ERP) greater than 50 watts and with an antenna height above average terrain (HAAT) higher than 7 meters;[25] and section 90.723(f), which requires coordination between certain Phase II 220 MHz licensees' facilities to ensure that frequencies are selected to avoid interference in the 220 MHz Band.[26] The Bureau stated that the rule waivers were "inseparably tied" to Congress' PTC mandate and limited to PTC.[27]

9. *AMTS Band Licenses and Rule Waivers*. During the course of its members' PTC deployments, PTC-220 determined that its 220 MHz Band spectrum holdings were insufficient for its

[17] *Id*. (listing AAR 220 MHz Band licenses and related leases). AAR is a trade association whose members include the seven U.S. Class I railroads as well as smaller non-Class I and passenger railroads including Amtrak. *AAR Members*, https://www.aar.org/about-us/aar-members/ (last visited Jan. 26, 2023).

[18] *2009 Waiver Order*, 24 FCC Rcd at 8544-46, paras. 18-20.

[19] 47 CFR §§ 90.713(a), 90.715, 90.717(b), and 90.735. The Bureau applied the rule waivers to PTC-220's (then) twelve 220 MHz Band licenses: two Phase I nationwide licenses (WPFP444 and WPFR284); one L Block nationwide license (WPOI701); six J Block REAG licenses (WPOI702, WPOI703, WPOI704, WPOI705, WPOI706, and WPOI708); and three E Block Economic Area licenses (WPOI774, WPOI800, and WPVL860). *See generally 2009 Waiver Order*. In 2015, the Bureau consented to PTC-220's assignment of its six J Block REAG licenses to AAR. *PTC-220 LLC*, Letter Order, 30 FCC Rcd 4635 (WTB MD 2015) (*2015 PTC-220 Order*). AAR currently leases spectrum under the six licenses to PTC-220. Waiver Modification Request, Appendix A, nn.1-6.

[20] *2009 Waiver Order*, 24 FCC Rcd at 8544-45, para. 18.

[21] *Id.* at 8545-46, para. 20.

[22] *Id.* at 8544, para. 17.

[23] *See, e.g.*, license condition appearing on call sign WQSK949 (limiting waivers to PTC).

[24] *2015 Waiver Order*, 30 FCC Rcd at 2283-86, paras. 9-17.

[25] 47 CFR § 90.729(b).

[26] 47 CFR § 90.723(f).

[27] *2015 Waiver Order*, 30 FCC Rcd at 2293, para. 45.

members to deploy robust, reliable PTC systems in areas of congested rail operations.[28] PTC-220 also determined that there was insufficient 220 MHz Band spectrum available on the secondary market to meet its members' additional spectrum needs.[29] To address this spectrum shortfall, PTC-220 acquired up to 500 kilohertz of spectrum in the adjacent 219.5-220 MHz portion of the AMTS Band in AMTS Regions 2, 3, 4, 5, 6, and 10 (call signs WRDI936, WRQI879, WRDH825, WRDH826, WRDH972, and WRKK374, respectively), providing its members AMTS spectrum coverage across much of the country. PTC-220's members' existing PTC radios can already tune to these frequencies, making AMTS channels easy to "pool" with PTC-220's 220 MHz channels for use in PTC networks.[30]

10. In 2021, the Bureau granted PTC-220 a waiver of several Part 80 rules to enable use of the AMTS frequencies for PTC as well as other rail safety (i.e., non-PTC) systems.[31] PTC-220 requests that we modify the scope of its six 220 MHz Band rule waivers to permit deployment of both PTC and other rail safety systems, consistent with the waiver relief we granted for its AMTS Band spectrum.[32]

III. DISCUSSION

11. For the reasons that follow, we find that the public interest in the safety of life and property and efficient use of spectrum will be served by granting PTC-220's request to modify the scope of six 220 MHz Band rule waivers to extend relief beyond PTC-specific uses to now include the deployment of additional (non-PTC) rail safety systems. Below, we first address whether modifying the rule waivers would be consistent with their fundamental purpose of enabling PTC deployment in the 220 MHz Band. Second, we discuss the benefits of allowing PTC-220 to deploy additional rail safety systems in the 220 MHz Band with the requested waiver relief. Third, we discuss modification of each rule waiver and related conditions concerning deployment of additional rail safety systems in the 220 MHz Band. Fourth, we address several related matters, including enhanced interference mitigation

[28] Waiver Modification Request at 9.

[29] *Id*.

[30] *Id*.; A*pplication of Thomas K. Kurian for Partitioning and Disaggregation of License* f*or Automated Maritime Telecommunications System Station WQCP809 to PTC-220, LLC*, Order, 35 FCC Rcd 13105, 13110-11, para. 18 (WTB MD 2020) (finding that "the proposed assignment of spectrum to enhance PTC and other rail safety systems will serve the public interest, convenience, and necessity").

[31] *PTC-220, LLC for Modification of Licenses for Automated Maritime Telecommunications System Stations WRDI936, WRDH825, WRDH826, and WRDH972*, Order, DA 21-1645, 2021 WL 6135309, *4-7, paras. 16, 20-27 (WTB MD rel. Dec. 27, 2021) (*2021 AMTS Waiver Order*). In that *Order*, the Bureau waived the following rules to facilitate the deployment of PTC and other rail safety applications in the AMTS Band: 47 CFR §§ 80.92(a) (requiring a licensee to monitor a frequency before transmitting, except for distress signals monitoring); 80.105 (requiring coast stations to receive calls from ship and aircraft stations); 80.106 (requiring a coast station to receive communications from mobile stations and to transmit communications delivered to it, which are directed to mobile stations); 80.123(a) (requiring an AMTS land station to secure a letter authorizing the land station to communicate with a coast station); 80.123(b) (requiring coast stations to afford priority to marine-originating communications); 80.123(f) (providing that AMTS land stations may only communicate with public coast stations); 80.215(h)(5) (requiring coast stations' transmitter power, as measured at the input terminals to the station antenna, to be 50 watts or less); and 80.385(a)(2) (dividing the AMTS Band into coast (base) station frequencies (217-218 MHz) and ship (mobile) station frequencies (219-220 MHz)).

[32] *See, e.g.*, Waiver Modification Request at 5. In the short term, PTC-220's member railroads are using AMTS spectrum to implement two additional PTC common channels; locomotive radios use these channels to attach to PTC base stations and receive instructions regarding the proper frequency to use in an area, thereby improving system reliability and safety. *David Martin, Esq., PTC-220 LLC, Call Sign WRKK374*, Letter Order, 36 FCC Rcd 17160, 17162 (WTB MD 2021). In the long term, PTC-220 also intends to leverage the AMTS spectrum to support: (1) other railroad safety applications, including End-of-Train devices and distributed power systems; and (2) future safety-related applications, such as improvements to the monitoring of grade crossing equipment. *2021 AMTS Waiver Order*, 2021 WL 6135309, *2, para. 8 (noting that the railroads will deploy AMTS spectrum to support both PTC and other "train control safety applications, including End-of-Train devices and distributed power systems").

requirements and compliance with historic preservation and environmental review requirements.

12. *Waiver Standard*. Under section 1.925 of the Commission's rules, the Commission may grant a request for waiver where: (i) the underlying purpose of a rule would not be served or would be frustrated by its application, and a grant of the requested waiver would be in the public interest; or (ii) given unique or unusual factual circumstances, application of a rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[33] Under section 1.3 of the Commission's rules, the Commission may waive a rule, in whole or in part, on its own motion or on petition for good cause.[34] Below, where applicable, we discuss application of these standards to PTC-220's Waiver Modification Request.

A. Positive Train Control Will Have the Highest Priority in the 220 MHz Band

13. PTC-220 explains that with the rule waivers granted in the *2009 Waiver Order* and in the *2015 Waiver Order*, its member railroads completed their PTC implementation in November 2020, with over 57,000 railroad route miles covered by PTC service.[35] According to the FRA, all railroads subject to the PTC mandate met their obligation to deploy PTC by year-end 2020.[36] PTC-220 asserts that allowing its members to deploy additional rail "safety applications will not adversely impact the railroads' ability to operate PTC systems in the 220 MHz band" because "[a]ll of the licenses will continue to be used for PTC, which will have the highest priority of any application."[37] PTC-220 states that any additional rail safety applications "will only be implemented in areas where there is sufficient spectral capacity."[38]

14. Based on the record before us, we find that the Bureau's goal in limiting the initial waiver relief to PTC—to enable deployment of interoperable PTC systems as mandated by Congress[39]—will not be undermined by permitting railroads to deploy complementary rail safety systems in the 220 MHz Band. Consistent with PTC-220's commitment, we will require PTC-220, as a condition of modifying the rule waivers, to afford PTC the highest priority on its 220 MHz Band spectrum. Specifically, PTC-220, and any other entity using PTC-220's currently licensed 220 MHz spectrum—including transferees, assignees, partitionees, disaggregatees, and lessees—may only implement additional (non-PTC) rail safety applications if the spectrum is unnecessary for PTC. Accordingly, should PTC-220 seek to lease or otherwise convey any of its currently licensed 220 MHz spectrum for rail safety purposes other than PTC, it must certify that the spectrum is not required by any of its members, their tenant railroads, and spectrum lessees to implement PTC.[40]

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[33] 47 CFR § 1.925(b)(3).

[34] 47 CFR § 1.3.

[35] Waiver Modification Request at 21 (noting that "as of November 2020, PTC has been fully implemented across the country, with 3,439 PTC base stations and over 28,000 wayside stations").

[36] FRA PTC Overview, *supra* note 9. The FRA stated that PTC was operative "on all 57,536 required freight and passenger railroad route miles," and that the railroads had achieved interoperability "between each applicable host and tenant railroad that currently operates on PTC-governed main lines." *Id*.

[37] Waiver Modification Request at 2, 22.

[38] *Id*. at 6.

[39] As noted above, in the *2015 Waiver Order*, the Bureau emphasized that the waiver of sections 90.723(f) (coordination requirements) and 90.729(b) (antenna height and power limits) was "inseparably tied" to the PTC mandate and specifically "limit[ed] the relief to PTC systems." *2015 Waiver Order* 30 FCC Rcd at 2293, para. 45.

[40] PTC-220 may lease or assign its 220 MHz spectrum with associated rule waivers for PTC use and, if there is sufficient excess capacity, for non-PTC rail safety applications. PTC-220 also may lease or assign its 220 MHz spectrum without associated rule waivers for other purposes (such as utility operations), but only upon an affirmative showing that the spectrum is unnecessary for PTC or another rail safety application, including prospectively. Thus, for example, PTC-220 may not lease or assign for utility operations any spectrum that could be used for future deployment of PTC on a currently non-PTC equipped rail line or future deployment of a non-PTC

(continued….)

B. Modification of the Rule Waivers Will Promote the Safety of Life and Property

15. We agree with PTC-220 that the public interest will be served by modifying the current PTC rule waivers so that its 220 MHz Band licenses could be used to deploy additional rail safety systems on both PTC- and non-PTC equipped rail corridors,[41] thereby serving the Commission's core policy goals of promoting the safety of life and property. PTC-220's members own and operate over 90,000 route miles across the nation.[42] Outside of the Northeast Corridor (which extends from Boston to Washington, DC), PTC-220's member-owned tracks host most of Amtrak's intercity passenger rail operations and, in many places, host commuter rail operations.[43] Although PTC-220's 220 MHz Band licensed spectrum and the spectrum it leases from AAR cover the U.S. rail network,[44] the spectrum is underutilized in many areas because the 220 MHz Band rule waivers' current PTC-only limitation precludes the deployment of non-PTC rail safety systems.[45] In areas where track is not PTC-equipped, valuable spectrum lies fallow because of the PTC-only limitation.[46]

16. In its Waiver Request, PTC-220 states that because of propagation characteristics and its nationwide footprint, its 220 MHz Band licensed spectrum is ideally suited for the deployment of additional rail safety systems.[47] PTC-220 states that modifying the rule waivers' scope will enable not only its seven member railroads, but also their tenants, including commuter railroads and Amtrak, and PTC-220's many railroad spectrum lessees, to deploy critical rail safety systems in the 220 MHz Band.[48] As explained in more detail below, these systems fall into two broad categories: (1) train operation systems, which control, or provide critical messages for, train operations including End-of-Train (EOT) devices and distributed power systems; and (2) wayside (that is, trackside) support systems, which

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rail safety application (such as grade crossing control) on any rail line. A third party seeking to acquire PTC-220's 220 MHz spectrum for a purpose other than PTC or a non-PTC rail safety application may request and separately justify waiver relief; we will evaluate waiver requests case by case on their merits.

[41] Waiver Modification Request at 2-3. PTC-220 argues that, conversely, maintaining the PTC-only restriction is tantamount to legacy "command and control" regulation, which the Commission has abandoned in favor of flexible use policies. *Id.* (citing FCC, *Connecting America: The National Broadband Plan*, at 78 (2010)), *available at* https://bit.ly/3tu9tVo. While PTC-220 has acquired AMTS Band spectrum across much of the country, there remain large areas where it has been unable to acquire AMTS Band spectrum on the secondary market. Waiver Modification Request at 9. PTC-220 does, however, have 220 MHz Band coverage in areas where it lacks AMTS coverage. Grant of the 220 MHz Band waiver relief requested here, PTC-220 asserts, therefore will ensure that there are no areas where railroads are unable to deploy rail safety applications because of PTC-220's limited AMTS coverage. *Id.* at 18-19.

[42] AAR, *Understanding Intercity Passenger, Commuter & Freight Railroads*, https://www.aar.org/integrated-rail-network (last visited Jan. 26, 2023). Approximately 630 short line railroads (Class II and III railroads) operate over approximately 45,000 route miles in 49 states. *Id*. For large areas of the country and particularly for small town rural America, short line rail service connects farmers and businesses to the national railroad network. *Id*.

[43] *Id*.

[44] Waiver Modification Request, Appendix A.

[45] PTC-220 asserts that although a waiver modification may not be needed to deploy safety applications that are integrated into a PTC system, modification would still be needed to permit deployment of these applications on lines that are not equipped with PTC. *Id*. at 3, 15.

[46] *Id*. at 20.

[47] *Id*. at 18.

[48] Waiver Modification Request Supplement at 2 (asserting that "these benefits will inure not only to PTC-220, which can more efficiently enable the safety applications on its network, but also to the dozens of freight, passenger, and commuter railroads across the United States that lease the spectrum and will utilize those safety applications to protect property and passengers' lives").

monitor and measure certain operations, helping safeguard the public.[49] PTC-220 also states that its member railroads intend to deploy advanced grade crossing technologies in the 220 MHz Band.[50]

1. Train Operation Systems

17. PTC-220 proposes to transition two key train safety systems—EOT devices and distributed power systems—from the 450 MHz Band, where they now operate, to the 220 MHz Band.[51] PTC-220 states that "[t]he 220 MHz Band features better propagation characteristics than the 450 MHz band" and that using existing "PTC base stations for EOT device traffic would dramatically improve EOT communications reliability."[52] PTC-220 explains that "[p]ermitting railroads to use the 220 MHz band for distributed power systems will allow railroads to more effectively and efficiently transition distributed power communication links to the PTC network infrastructure," which is optimized for 220 MHz Band traffic.[53]

a. End-of-Train (EOT) Devices

18. EOT deployments include a radio at a train's end, which transmits brake line pressure and other vital information to a locomotive unit, where an engineer receives the information.[54] The end unit must be mounted on the coupling knuckle behind the train's last car; this design means that the transmission path from the end unit to the locomotive unit is always blocked by intervening rail cars,[55] and the trend towards longer trains has exacerbated the problem.[56] For example, two of PTC-220's members had average train lengths of 1.2 and 1.4 miles in 2017, and some trains are as long as three miles.[57]

19. PTC-220 explains that properly functioning EOT devices are essential for safe train operations: interruption of the communications link between the end unit and the locomotive unit will stop a train as a precautionary measure, increasing the potential for derailment.[58] The FRA recently emphasized the importance of properly functioning EOT devices in a Safety Advisory focusing on accident mitigation when operating longer trains.[59] The FRA's recommendations "to ensure the safe operation of such trains" include "tak[ing] appropriate action to prevent the loss of communications

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[49] Waiver Modification Request at 14-18.

[50] *Id*. at 17.

[51] *Id*. at 15-16.

[52] *Id*. at 15.

[53] *Id*. at 16. *See also* USDOT, FRA, *Railroad Wireless Communications Roadmap* at 50-51 (Mar. 2020) (FRA Roadmap Report) (noting the 220 MHz Band is well suited for deployment of certain rail safety applications), https://railroads.dot.gov/sites/fra.dot.gov/files/2020-3/Railroad%20Wireless%20Communications%20Roadmap.pdf.

[54] Waiver Modification Request at 15; FRA Roadmap Report at 7.

[55] Waiver Modification Request at 15.

[56] *Id*.

[57] U.S. Government Accountability Office, Report to Congressional Requesters (GAO-19-443), *Rail Safety: Freight Trains are Getting Longer, and Additional Information is Needed to Assess Their Impact* at 11-12 (May 2019), *available at* https://www.gao.gov/products/gao-19-443.

[58] Waiver Modification Request at 15. In 2013, the Commission found that EOT devices "benefit the public by increasing the safety of life and property for railroads and their employees, and for people in communities through which trains travel." *Amendment of Part 90 of the Commission's Rules*, PR Docket No. 89-552, Fifth Report and Order, 28 FCC Rcd 5924, 5925, para. 4 (2013).

[59] USDOT, FRA, Safety Advisory 2023-03; Accident Mitigation and Train Length, 88 Fed. Reg. 27570 (May 2, 2023). The Safety Advisory discusses three significant derailment incidents in 2023 involving trains longer than two miles with at least 200 cars. *Id*. at 27571.

between end-of-train devices . . . ."[60] The Safety Advisory explains that longer trains are more prone to experience EOT device signal loss because of the longer distance signals must travel (compared to shorter trains), and highlights the potentially dire consequences of a signal loss between EOT devices.[61] The FRA "recommends that railroads implement technologies, policies, procedures, and any necessary hardware enhancements to ensure two-way EOT devices maintain continuous and undisrupted communications to and from the front and rear units."[62]

20. PTC-220 states that channel capacity cannot be expanded, nor can congestion management be supported, within the 450 MHz Band for any application facing scarcity of bandwidth.[63] PTC-220 asserts that this is a particular concern for the EOT application, whose single 12.5 kilohertz channel is heavily used and is often exhausted.[64] According to PTC-220, the use of 220 MHz Band spectrum and the railroads' extensive network of 220 MHz Band base stations for EOT device communications links would markedly improve EOT device reliability.[65]

b. Distributed Power Systems

21. In a distributed power system, one or more locomotives are placed within or at the end of a train to reduce in-train stresses related to braking and pulling.[66] PTC-220 states that the use of additional locomotives in certain mountainous terrain and the rail industry's trend towards longer trains has worsened the problem of unreliable communications links for distributed power systems.[67] PTC-220 explains that when a distributed power system's communications link is disrupted, locomotives can lose synchronization, creating stresses at the connecting knuckles and increasing the risk that train cars will separate.[68] When separation occurs, brakes typically engage, which can lead to unsafe stopping.[69]

22. Train crews currently use 450 MHz Band spectrum to control additional locomotives remotely from a lead locomotive.[70] Although the 450 MHz Band has up to 13 channel pairs totaling 325 kilohertz of available spectrum for use by the railroad industry, these channels are not fungible.[71] They are divided up by safety application for dedicated use; for example, distributed power uses four dedicated

[60] *Id*. at 27570-71; *see also id*. at 27572.

[61] *Id*. at 27572 (noting that such loss of communication "can be temporary or permanent, and can result in an emergency air brake signal from the controlling locomotive taking longer to propagate through the entire train (effectively slowing down braking of the entire consist), or in the event of a train air brake line blockage, a loss of communication between the EOT devices will result in the emergency signal not being transmitted to the rear EOT device").

[62] *Id*.

[63] Declaration of Alan L. Polivka, Senior Scientist II, Communications & Train Control, MxV Rail, dated July 21, 2022, at 8, para. 19, attached to Waiver Modification Request Supplement (Polivka Declaration).

[64] *Id*.

[65] Waiver Modification Request at 15. PTC-220 reports that U.S. railroads currently are developing new EOT standards that include vibration sensors as well as GPS location for the rear of the train, and that the information regarding the location of the end of the train (more precise than what is available today) will be transmitted to traffic control. It adds that, while not part of the minimum requirements for PTC, this feature will be integrated into the overall traffic control systems and will help reduce rear-end collisions. *Id*.

[66] *Id*. at 16.

[67] *Id*.

[68] *Id*.

[69] *Id*.

[70] *Id*.

[71] Polivka Declaration at 8, para. 19.

channels.[72] PTC-220 states that more flexibility to utilize the 220 MHz Band for distributed power and other safety systems would mitigate engineering challenges where the rails have exhausted 450 MHz Band capacity.[73]

2. Wayside Support Systems

23. PTC-220 proposes that railroads use 220 MHz Band spectrum to support existing wayside support systems (for example, trackside detectors) and wayside systems under development, including wireless control of grade-crossing equipment.[74]

a. Trackside Detectors

24. Railroads deploy an array of wireless trackside detectors along rights-of-way, which scan passing trains and the environment for factors that may threaten public safety.[75] For example, trackside hot bearing detectors (HBDs) are used to measure the temperature of wheel bearings to prevent meltdown.[76] Trackside sensors also can alert users to objects dragging from passing trains; identifying loose or partially detached objects on trains (for example, an air hose or pipe) can prevent human injury and damage to rail infrastructure and help avoid derailments.[77] Also, trackside sensors can detect and communicate the existence of environmental obstacles that may pose a threat to public safety, including low-bridge clearances and rock slides.[78] Additionally, wayside devices are used to read automatic equipment identifiers (that is, radiofrequency tags on rail cars), which can be used to confirm that cars on the train meet a route's height or width restrictions.[79] PTC-220 states that railroads "continue to identify other external stimuli that would be suitable for real-time trackside detection" using 220 MHz Band spectrum.[80]

b. Hi-rail Limits Compliance Systems

25. PTC-220 proposes to enhance rail worker safety by using 220 MHz Band spectrum to deploy Hi-rail Limits Compliance Systems (HLCS), which are designed to ensure safe operation of steel-wheel maintenance vehicles when operating on railroad tracks.[81] HLCS use Global Positioning Systems (GPS) to monitor the location of hi-rail vehicles, compare their location against the track authorization limits issued to the vehicle, and alert the operator if the vehicle is operating outside of its authorized limits.[82] HLCS also have radios, which allow a hi-rail vehicle operator to notify a dispatcher of

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[72] 47 CFR § 90.35.

[73] Polivka Declaration at 8, para. 19.

[74] Waiver Modification Request at 16-18.

[75] *Id*. at 16.

[76] *Id*. According to the National Transportation Safety Board (NTSB), a Norfolk Southern Railway freight train derailed in East Palestine, Ohio on February 3, 2023, shortly after an HBD "transmitted a critical audible alarm message instructing the crew to slow and stop the train to inspect a hot axle." NTSB, Preliminary Report RRD23MR005, *Norfolk Southern Railway Train Derailment with Subsequent Hazardous Material Release and Fires* at 2-3 (issued Feb. 22, 2023), https://www.ntsb.gov/investigations/Documents/RRD23MR005%20East%20Palestine%20OH%20Prelim.pdf. The NTSB reported that "[s]urveillance video from a local residence showed what appeared to be a wheel bearing in the final stage of overheat failure moments before the derailment." *Id*. at 3.

[77] Waiver Modification Request at 16.

[78] *Id*.

[79] *Id*.

[80] *Id*.

[81] *Id*.

[82] *Id*.; FRA Roadmap Report at 5.

emergencies.[83]

c. Grade-Crossing Safety Systems

26. According to preliminary FRA data, in 2021, there were over 2,200 collisions at U.S. highway-rail grade crossings, resulting in 235 fatalities and 669 injuries.[84] Local authorities frequently complain about the length of time that crossing gates remain down (or signals remain red), especially where trains approach a crossing very slowly, or stop short of a crossing.[85] This is a common issue for commuter railroads, which often have station stops near grade crossings. And blocked crossings can frustrate motorists into taking the unsafe action of physically raising crossing arms to cross tracks.[86] PTC-220 seeks a modification of its existing rule waivers to enable it to use its 220 MHz spectrum holdings to improve the safety of the nation's grade crossings.[87]

27. *Equipment Monitoring*. Currently, railroads rely on monthly physical inspections required by FRA rules to monitor the condition of grade-crossing safety equipment.[88] PTC-220 states that 220 MHz Band spectrum would be well suited to monitoring wirelessly the status of grade-crossing equipment including signals and gates.[89] PTC-220 explains that implementation of wireless monitoring grade-crossing equipment would enable railroads to respond quickly to equipment malfunctions, thereby minimizing equipment "downtime" and improving public safety.[90]

28. *Wireless Grade Crossing Control*. According to PTC-220, FRA officials have encouraged railroads to find a solution to the "gates-down" problem, which occurs when sensors activate rail crossing gates when a train passes a predetermined point.[91] Sensors are set far enough back from a crossing to allow sufficient time for gates to close, while assuming that the train is moving at maximum allowed speed. If the train is moving more slowly, the gates will close prematurely, and if the train stops before reaching the crossing, the gates might remain closed even though there is no imminent danger of a passing train.[92]

29. To solve the gates-down problem, railroads are developing a wireless system that will allow for more precise timing of a crossing closure based on real-time communications between a locomotive and crossing equipment.[93] PTC-220 explains that a locomotive onboard computer would radio ahead to the crossing equipment, advising when the train will arrive at the crossing, based on its

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[83] FRA Roadmap Report at 5.

[84] Operation Lifesaver, Inc., Collisions & Casualties by Year, *All Highway-Rail Incidents at Public and Private Crossings, 2021-1981* (last updated Dec. 9, 2022), https://oli.org/track-statistics/collisions-casualties-year (last visited Jan. 26, 2023). And in the preceding five years, there was an annual average of 257 deaths at U.S. grade crossings. USDOT, FRA, Report No. RR 21-05, *Automated Video Inspection System for Grade Crossing Safety* at 1 (April 2021), https://railroads.dot.gov/elibrary/automated-video-inspection-system-grade-crossing-safety.

[85] Waiver Modification Request at 17.

[86] *Id*. n.57 (citing Maria Guerrero, *Railroad Crossing Arms Remain Down Minutes on End With No Trains in Sight*, NBCDFW (Aug. 16, 2017) (noting that the prolonged lowering of railroad crossing gates has led motorists to raise the crossing arms manually to let traffic through), https://bit.ly/3L4DVvg).

[87] *See* Waiver Modification Request at 13-14.

[88] *Id*. at 17.

[89] *Id*.

[90] *Id*.

[91] *Id*.

[92] *Id*.

[93] *Id*.

current speed and location.[94] If a train stops before reaching the crossing, the gates would be disarmed temporarily. PTC-220 explains that on PTC-equipped rail lines, this functionality could be integrated into a PTC system, but on non-PTC equipped track, waiver modifications are needed to permit the deployment of this potentially life-saving application.[95]

C. Modification of Individual Rule Waivers

30. As explained above, modification of the existing rule waivers will enable U.S. freight, passenger, and commuter railroads to deploy an array of innovative life- and property-saving systems on PTC-equipped rail lines using PTC-220's extensive 220 MHz Band spectrum holdings. Equally important, modification of the rule waivers will enable railroads to deploy vital safety systems with 220 MHz Band spectrum that lies fallow on lines that are not currently equipped with PTC. For the reasons stated above and for those that follow, we find that modification of the rule waivers to enable the deployment of additional rail safety applications is warranted.

1. Modification of 2009 Rule Waivers

31. As explained above, in the *2009 Waiver Order*, the Bureau granted PTC-220 a limited waiver of four 220 MHz Band operational rules, applying them to PTC-220's (then) twelve 220 MHz Band licenses, where applicable—for PTC operations only; the Bureau later extended the same limited waiver relief to the additional 220 MHz Band licenses that PTC-220 had subsequently acquired.[96] The Bureau emphasized that the extraordinary relief was "inextricably tied" to the PTC mandate and the substantial public interest benefits that will accrue from a nationwide interoperable PTC rail safety network.[97] For the reasons discussed below, we now modify the scope of the four rule waivers to enable deployment of additional (i.e., non-PTC) rail safety systems in the 220 MHz Band.

a. Sections 90.713(a) and 90.717(b), Phase I Nationwide License Commercial-Use Restrictions

32. Sections 90.713(a) and 90.717(b) of the Commission's rules limit Phase I Nationwide 220 MHz Band licenses to commercial use.[98] In the *2009 Waiver Order*, the Bureau waived the commercial-use restrictions for PTC-220's Phase I Nationwide licenses WPFP444 and WPFR284.[99] The Bureau reasoned that by enabling PTC-220's members to deploy PTC technology on a private basis in the 220 MHz Band, waiver of the commercial-use restrictions would further public safety while serving the Commission's spectrum efficiency and flexibility goals.[100]

33. PTC-220 notes that five years before Congress adopted the PTC mandate, the Bureau—in the *2003 AAR Order*—waived the commercial-use restrictions so that AAR's freight railroad members could use nationwide 220 MHz Band license WPWY753 to deploy a non-commercial locomotive switching technology.[101] The Bureau found that a waiver of the commercial-use restrictions to enable the

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[94] *Id*.

[95] *Id*. at 18.

[96] *See supra* paras. 6-7.

[97] *2009 Waiver Order*, 24 FCC Rcd at 8544, para. 17.

[98] 47 CFR §§ 90.713(a) (making channels "available for nationwide, commercial use to non-Government, Phase I applicants"), 90.717(b) (making channels "available to non-Government applicants only for nationwide, commercial Phase I systems").

[99] *2009 Waiver Order*, 24 FCC Rcd at 8545-46, para. 20.

[100] *Id*.

[101] Waiver Modification Request at 11 (citing *Application for Consent to the Assignment of a Five-Channel 220 MHz Nationwide License (Call Sign WPWY753, formerly WPTC968) from Rush Network Corp. to the Association of American Railroads*, Order, 18 FCC Rcd 24711 (WTB CWD 2003) (*2003 AAR Order*)).

switching technology at some 300 locations would provide "public safety, spectrum efficiency, and spectrum flexibility" benefits.[102] In the *2015 PTC-220 Order*, the Bureau consented to AAR's assignment of WPWY753 to PTC-220, and granted PTC-220's request for waiver of the commercial-use restrictions to deploy PTC.[103] The Bureau stated that a waiver "is appropriate because PTC-220 members and other railroads operate PTC systems on a private, non-commercial basis."[104]

34. The same public safety, spectrum efficiency, and spectrum flexibility benefits cited by the Bureau in the *2009 Waiver Order* and in the *2003 AAR Order* support modifying the waiver of the commercial-use restrictions to enable the railroads' deployment of additional rail safety systems using all of PTC-220's 220 MHz Band licenses.[105] Accordingly, because it will "promot[e] the safety of life and property,"[106] we find good cause under section 1.3 of the Commission's rules to expand the scope of the waiver relief concerning section 90.713(a)'s and section 90.717(b)'s commercial-use restrictions, thereby enabling U.S. railroads using PTC-220's MHz spectrum or operating on PTC-220's member-owned tracks (including Amtrak and certain commuter railroads) to deploy key rail safety applications in the 220 MHz Band.

b. Section 90.715(a), 220 MHz Band Base/Mobile Configuration Requirement

35. Commission rule section 90.715(a) provides for frequencies to "be assigned in pairs with base station frequencies taken from the 220-221 MHz band [segment] with corresponding mobile and control frequencies being 1 MHz higher and taken from the 221-222 MHz band [segment]."[107] In the *2009 Waiver Order*, the Bureau noted that PTC systems were designed to transmit and receive in both band segments to ensure functionality.[108] The Bureau waived the 220 MHz Band base/mobile configuration requirements to permit PTC base/mobile stations that can transmit and receive signals on either band segment. The Bureau found that by waiving the base/mobile band configuration rule, the public interest in rail safety would be served, particularly in congested areas shared by multiple freight and commuter railroads.[109]

36. Expanding the scope of the section 90.715(a) waiver relief would enable nationwide, regional, and local deployment of additional rail safety applications in the 220 MHz Band on both PTC-equipped and non-PTC rail lines, including in congested areas shared by multiple freight and commuter railroads. We find that under the first prong of the Commission's section 1.925(b)(3) waiver standard, modifying the waiver of the base/mobile band configuration requirement will serve the public interest in rail safety by facilitating the deployment of an array of spectrally-efficient rail safety systems in both band segments and that the underlying purpose of the rule—to limit interference[110]—would not be served

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[102] *2003 AAR Order*, 18 FCC Rcd at 24714, para. 8.

[103] *2015 PTC-220 Order*, 30 FCC Rcd at 4635, 4638.

[104] *Id*. at 4638. We note that the Bureau did not limit the waiver to PTC.

[105] The Appendix to this Order provides a list of the licenses subject to today's modification of the sections 90.713(a) and 90.717(b) rule waivers.

[106] 47 U.S.C. § 151 (establishing the Commission for the "purpose of promoting safety of life and property through the use of wire and radio communications").

[107] 47 CFR § 90.715(a).

[108] *2009 Waiver Order*, 24 FCC Rcd at 8541, para. 9.

[109] *Id*. at 8544-45, para. 18.

[110] According to PTC-220, "[i]n the more than eight years that the railroads have been transmitting in the 220 MHz band (with the nationwide network substantially complete as of 2018), there have been no known cases of harmful interference." Waiver Modification Request at 3. As explained below, *see infra* para. 60, even if PTC-220 does receive a report of interference related to its rail safety operations, today's Order requires PTC-220 to investigate and resolve such reports at its own expense within 60 days.

by its strict application here.[111]

c. Section 90.735(a), Station Identification Requirements

37. PTC-220 seeks to deploy additional rail safety systems under a modified waiver of section 90.735(a), which requires certain stations in the 220 MHz Band to identify themselves periodically.[112] The rule is intended to ensure that the Commission and other spectrum users can identify sources of potential interference.

38. In the *2009 Waiver Order*, the Bureau concluded that section 90.735's station identification requirements were unnecessary where "licensees operate on exclusive channel blocks on a nationwide basis or in defined regions . . . and are readily identifiable through the Commission's licensing records or other publicly available information."[113] The Bureau stated that the same rationale applied to PTC-220's then six REAG licenses, because they "essentially form a *de facto* nationwide license, and there will be no co-channel users in close geographic proximity."[114] In 2015, when the Bureau consented to PTC-220's assignment of the six REAG licenses to AAR, it also granted AAR relief from the station identification requirements, noting that it likewise would be readily identifiable in Commission records to third parties.[115] AAR currently leases spectrum under these licenses to PTC-220.[116]

39. Also in the *2009 Waiver Order,* the Bureau waived the station identification requirements for PTC-220's then three (now eight) geographically smaller E Block Economic Area licenses, subject to several conditions.[117] Although potentially interfering transmissions should be limited to areas along rail lines, the Bureau found it prudent to require PTC-220 to meet certain notification procedures to minimize the burden on co-channel adjacent market 220 MHz Band licensees in determining whether or not PTC-220's operations are causing interference.[118] Under the procedures adopted by the Bureau:

- PTC-220 must notify all co-channel 220 MHz Band licensees in adjacent markets 30 days prior to commencing operations on any of its E Block Economic Area licenses.
- Notifications must include a point of contact within PTC-220 to address any concerns regarding interference.
- PTC-220 must promptly cure any instances of actual interference that may occur to other 220 MHz Band licensees at its own expense.[119]

40. Subject to the conditions enumerated above, we find good cause under section 1.3 of the Commission's rules to modify the scope of the waiver of section 90.735(a)'s station identification requirements to permit the deployment of additional rail safety systems in the 220 MHz Band because it will promote the safety of life and property related to U.S. freight, intercity passenger, and commuter rail

[111] 47 CFR § 1.925(b)(3)(i). The Appendix to this Order provides a list of the licenses subject to today's modification of the section 90.715(a) rule waiver.

[112] Waiver Modification Request at 12 (citing 47 CFR § 90.735(a) ("[e]xcept for nationwide systems authorized in the 220-222 MHz band, station identification is required pursuant to § 90.425 of this part")).

[113] *2009 Waiver Order*, 24 FCC Rcd at 8544, para. 18.

[114] *Id*.

[115] 2015 *PTC-220 Order*, 30 FCC Rcd at 4637.

[116] Waiver Modification Request, Appendix A.

[117] *2009 Waiver Order*, 24 FCC Rcd at 8545, para 19.

[118] *Id*. The Bureau also noted that if "an adjacent market licensee does experience co-channel interference, it can determine if the source is a site-specific incumbent because site-specific incumbents will be transmitting station identification information." *Id*. n.68.

[119] *Id*. at 8545, para 19. The Bureau also noted that unresolved interference may result in action by the Commission requiring PTC-220 to suspend operation of the offending transmitter until the interference is resolved. *Id*.

operations.[120]

2. Modification of 2015 Rule Waivers

a. Section 90.729(b), Upper 221-222 MHz Band Segment Power and Antenna Height Limits

41. PTC-220 requests modification of the waiver of section 90.729(b),[121] so that it may deploy additional rail safety systems in the upper 221-222 MHz band segment with increased power and antenna height.[122] Section 90.729(b) limits operations in the upper band segment to an effective radiated power (ERP) of 50 watts and an antenna height above average terrain (HAAT) of 7 meters,[123] while stations in the lower band segment are permitted to use up to 500 watts ERP with an antenna HAAT up to 150 meters.[124] The Commission adopted section 90.729(b)'s power and antenna height limits to address the possibility of interference to co- and adjacent channel operations.[125]

42. The Commission planned the 220 MHz Band as a frequency division duplex band, "with base station frequencies taken from the 220-221 MHz band [segment] with corresponding mobile and control station frequencies being 1 MHz higher and taken from the 221-222 MHz band" segment under section 90.715(a).[126] As noted above, in the *2009 Waiver Order*, the Bureau granted PTC-220 a waiver of section 90.715(a)'s base/mobile configuration limits.[127] Although the *2009 Waiver Order* permits base station operations in the upper 221-222 MHz band segment, the upper band segment's more restrictive power and antenna height rules limit its utility for base station operations.

43. In the *2015 Waiver Order*, the Bureau granted PTC-220 a conditional waiver of section 90.729(b)'s power and antenna height limits to enable PTC deployment in the upper 221-222 MHz band segment.[128] The Bureau noted that without a rule waiver, base station transmissions in the upper band segment would have a much smaller coverage footprint than those in the lower band segment (where higher-powered operations are permitted by rule), which could limit network capacity and require the construction of additional sites.[129] The Bureau found that waiver of section 90.729(b)'s power and antenna height limits "would serve the public interest of all Americans in rail safety, including the safety of life and property, by facilitating PTC deployments in urban and other areas."[130] The Bureau also found that waiver of section 90.729(b) would serve the public interest by "enabling more intensive use of PTC-220's unique spectrum resources to deploy advanced rail safety systems."[131] The Bureau reasoned that "strict application of [s]ection 90.729(b)'s power and antenna height limits would be contrary to the public interest in the safety of life and property, and in efficient spectrum use," and authorized PTC

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[120] *See* 47 U.S.C. § 151. The Appendix to this Order lists the licenses subject to today's modification of the section 90.735(a) rule waiver.

[121] 47 CFR § 90.729(b).

[122] Waiver Modification Request at 13.

[123] 47 CFR § 90.729(b) (but permitting transmissions from antennas higher than 7 meters HAAT if the ERP is reduced below 50 watts ERP by 20 log10(h/7) dB, where h is the HAAT in meters).

[124] 47 CFR § 90.729(a). When a station in the lower band exceeds 150 meters HAAT, it must reduce its ERP correspondingly. *Id.*

[125] *2015 Waiver Order*, 30 FCC Rcd at 2285, para. 14.

[126] 47 CFR § 90.715(a).

[127] *See supra* para. 33.

[128] *2015 Waiver Order*, 30 FCC Rcd at 2283-90, paras. 9-33.

[129] *Id*. at 2284, para. 12.

[130] *Id*. at 2285, para. 15.

[131] *Id*., para. 16.

operations in the upper 221-222 MHz band segment at the same power and antenna heights that are permitted, by rule, in the lower 220-221 MHz band segment.[132]

44. The Bureau's reasoning in the *2015 Waiver Order* and the record before us support expanding the scope of our waiver of section 90.729(b) to enable deployment of additional rail safety systems in the upper band segment with increased power and antenna height. Such relief will provide the U.S. rail industry additional spectrum capacity,[133] obviate the need to construct additional towers and wayside poles in areas with existing 220 MHz infrastructure controlled by PTC-220 and, by facilitating deployments of advanced safety applications, serve the public interest of all Americans in rail safety. We find that, under the second prong of the Commission's section 1.925(b)(3) waiver standard, given the unique circumstances here—including the well-recognized public safety benefits of the applications that PTC-220 proposes to deploy in the 220 MHz Band, and the ubiquitous coverage of PTC-220's 220 MHz Band licenses and its extensive infrastructure optimized for the 220 MHz Band[134]—strict application of section 90.729(b)'s power and antenna height limits to the additional rail safety systems would be contrary to the public interest in the safety of life and property, and in efficient spectrum use.[135]

45. In the *2015 Waiver Order*, the Bureau adopted specific measures to ensure that co- and adjacent channel licensees in the 220 MHz Band do not suffer harmful interference from waiver of section 90.729(b)'s power and antenna height limits.[136] The record reflects that PTC-220's member railroads have deployed PTC in the 220 MHz Band across the nation for seven years under the waiver's less restrictive power and antenna height limits without any verified reports of interference.[137] Nevertheless, out of an abundance of caution and to ensure that co- and adjacent channel licensees in the 220 MHz Band do not suffer harmful interference from a modified waiver of section 90.729(b)'s power and antenna height limits, we will apply the same measures (including field strength limits, frequency and geographic spacing requirements, and prior notification requirements) to deployments of rail safety systems under the modified rule waiver. These measures are described below.

(i) Field Strength Limit Condition, Economic Area Licenses

46. *Co-Channel Interference*. Among the protective measures adopted by the Bureau in the *2015 Waiver Order* was a requirement that PTC-220 meet a 38 dBμ field strength limit at the license area's border of its then six (now eight) E Block Economic Area licenses for waiver operations in the upper 221-222 MHz band segment.[138] The Bureau provided that, should a co-channel licensee suffer harmful interference despite PTC-220's compliance with a 38 dBμ field strength limit, PTC-220 must promptly resolve such interference at its own expense.[139]

47. We seek to ensure that adjacent market co-channel spectrum users will not suffer harmful

[132] *Id*. at 2286, para. 17.

[133] Polivka Declaration at 3, para. 7 (noting that "where the level of congestion in the 450 MHz Band is approaching exhaustion, the added flexibility of using the 220 MHz Band to offload wireless traffic in capacity-constrained areas will help ensure that railroads operate safely").

[134] *Id*. at 8-9 (noting that the ability to use the 220 MHz Band "for multiple safety-related applications would maximize network effectiveness and minimize the siting requirements needed in more rural and expansive portions of the railway train network").

[135] *See 2015 Waiver Order*, 30 FCC Rcd at 2286, para. 17; 47 CFR § 1.925(b)(3)(ii). The Appendix to this Order lists the licenses subject to today's modification of the section 90.729(b) rule waiver.

[136] *2015 Waiver Order*, 30 FCC Rcd at 2287-90, paras. 22-33.

[137] Waiver Modification Request at 19 (noting that "[i]n the rare cases where another licensee has complained to the railroads of suspected interference, the parties investigated and subsequently determined that the source of interference was not, in fact, PTC operations in the 220 MHz band").

[138] *2015 Waiver Order*, 30 FCC Rcd at 2287, paras. 19-20.

[139] *Id.*, para. 20.

interference that might arise from deployment of additional rail safety systems at increased power or height in the upper 221-222 MHz band segment, and will require deployments under the expanded rule waiver to meet a 38 dBμ field strength limit at the license area border of PTC-220's eight Economic Area E Block licenses.[140] We also will require that, should a co-channel licensee suffer harmful interference despite PTC-220's compliance with a 38 dBμ field strength limit, PTC-220 must promptly resolve such interference at its own expense.

(ii) Geographic and Spectral Separation, and Noise Floor Conditions

48. *Adjacent Channel Interference*. In the *2015 Waiver Order*, the Bureau also adopted frequency and geographic spacing requirements to reduce the possibility that base station operations under the rule waiver could cause interference to adjacent channel licensees.[141] The Bureau explained that there would be no guard band between PTC transmitters and other licensees' receivers in the upper 221-222 MHz band segment, and that requiring PTC-220 to comply with frequency and geographic spacing requirements would mitigate the possibility that base station operations under the waiver could cause interference to adjacent channel licensees.[142]

49. The Bureau required PTC-220 to comply with the following geographic and spectral separation requirements, and related power limits:

- PTC-220 must obtain the concurrence of a licensee to site a transmitter within 25 kHz and between 0.3 and 6 kilometers of a non-nationwide Phase I receiver, and must comply with the geographic separation/graduated ERP limits of section 90.723(d).[143]
- PTC-220 must comply with the geographic separation/graduated ERP limits of section 90.723(d) to site a transmitter within 25-200 kHz and between 0.3 and 6 kilometers of a non-nationwide Phase I receiver.
- PTC-220 must obtain the concurrence of a licensee to site a transmitter within 25 kHz and between 0.3 and 6 kilometers of an existing nationwide Phase I or Phase II receiver, and must comply with the geographic separation/graduated ERP limits of section 90.723(d).
- PTC-220 must comply with the geographic separation/graduated ERP limits of section 90.723(d) to site a transmitter within 25-200 kHz and between 0.3 and 6 kilometers of an existing nationwide Phase I or Phase II receiver.[144]

50. The Bureau also required PTC-220 to limit any increase in the noise floor to ensure the performance of existing nationwide Phase I and Phase II receivers, within 25 kHz and between 6 and 10 kilometers of a proposed PTC transmitter, as follows:

- PTC-220 must provide a licensee an engineering study showing that degradation of the noise floor from the proposed transmitter at a potential victim site will be 2dB or less.
- If the degradation in the noise floor is greater than 2dB, PTC-220 may not operate the proposed transmitter unless it receives concurrence from the affected licensee.
- If a licensee believes it would suffer interference, despite PTC-220 meeting the 2dB

[140] The license call signs include: WPOI710 (Boston); WPOI774 (Memphis); WPOI800 (St. Louis); WPOI924 (Philadelphia); WPOJ279 (Rochester, MN); WPOJ280 (Minneapolis); WPOJ281 (San Francisco); and WPVL860 (Los Angeles).

[141] *2015 Waiver Order*, 30 FCC Rcd at 2287-88, paras. 22-25.

[142] *Id.* at 2288, para. 24.

[143] 47 CFR § 90.723(d).

[144] *2015 Waiver Order*, 30 FCC Rcd at 2288, para. 25.

requirement, PTC-220 must coordinate further.[145]

51. We will require deployments of additional rail safety systems under the modified rule waiver to comply with the foregoing geographic and spectral separation requirements, and noise floor limits. This will reduce the possibility that base station operations could cause interference to adjacent channel licensees in the upper 221-222 MHz band segment.

(iii) Prior Notification Condition

52. In the *2015 Waiver Order*, the Bureau also sought to ensure that 220 MHz Band licensees have sufficient time to consider PTC-220's proposed waiver-enabled transmitter operations. It provided that before operating a new waiver-enabled transmitter or an existing waiver-enabled transmitter with increased height or power, PTC-220 must notify all 220 MHz Band licensees within 200 kHz and 20 kilometers of a proposed transmitter.[146] The notice must:

- specify the proposed transmitter's operating parameters, including site location, frequencies, antenna height, and power;
- include a point of contact with the address, email address, and phone number, to address any concerns regarding potential interference; and
- be concurrently transmitted by mail and email to the licensee, to the licensee contact and, if different, to the licensee's FCC Registration Number contact.[147]

53. The Bureau provided that PTC-220 may begin operating a waiver-enabled transmitter 30 days after the date it transmits the required notice, unless a recipient seeks further information to address concerns regarding potential interference.[148] The Bureau also sought to address time-sensitive situations, and stated it would allow PTC-220 "to begin operating a transmitter before 30 days have passed, provided it obtains the affirmative concurrence of all notice recipients that they consent to operation of a transmitter before 30 days have passed."[149]

54. We seek to ensure that 220 MHz Band licensees have sufficient time to consider PTC-220's proposed waiver-enabled deployments of additional rail safety systems. Therefore, we will require PTC-220 to comply with the foregoing prior notification requirements when deploying additional rail safety systems under the modified waiver of section 90.729(b)'s power and antenna height limits.

b. Section 90.723(f), Coordination Requirements

55. PTC-220 requests that we modify its waiver of section 90.723(f), which requires Phase II licensees with base or fixed stations transmitting on frequencies in sub-band B (220.8025-220.9975 MHz) of the lower 220-221 MHz band segment, and Phase II licensees with base or fixed stations receiving on sub-band A (221.0025-221.1975 MHz) of the upper 221-222 MHz band segment to coordinate the location of stations to avoid interference where the transmitting and receiving frequencies are 200 kHz or less apart.[150] The underlying purpose of section 90.723(f)'s general coordination requirement is "to protect licensees from co- and adjacent channel interference,"[151] by "ensur[ing] that appropriate

[145] *Id.* at 2289, para. 27.

[146] *Id*., para. 29.

[147] *Id*.

[148] *Id*., para. 30.

[149] *Id*.

[150] 47 CFR § 90.723(f); Waiver Modification Request at 13-14.

[151] *See 2015 Waiver Order*, 30 FCC Rcd at 2291, para. 36.

geographic separations are maintained" among licensees deploying in sub-bands A and B.[152]

56. As explained above, in the *2015 Waiver Order*, the Bureau required PTC-220 to meet specific geographic and spectral spacing requirements as a condition of deploying transmitters with increased power and antenna height in the upper 221-222 MHz band segment.[153] The Bureau agreed with PTC-220 that these "spacing requirements should generally obviate the need for PTC-220 to coordinate the location of base stations pursuant to [s]ection 90.723(f)."[154] However, to "preserve the rights of potentially affected licensees," the Bureau required PTC-220 to provide at least 30 days' prior written notice of a planned waiver-enabled transmitter to Phase II licensees, within 200 kHz and 20 kilometers of a proposed transmitter, that would otherwise be covered by section 90.723(f)'s coordination requirements.[155]

57. *Compliance with Section 90.173(b)*. Also in the *2015 Waiver Order*, the Bureau noted that section 90.723(f) requires licensees to cooperate to resolve any instances of interference pursuant to section 90.173(b), and found that the public interest would be served by requiring PTC-220 to comply with section 90.173(b).[156] The rule requires licensees to "cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities."[157] The rule states that "[l]icensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements."[158] Under the rule, where licensees are unable to cooperatively resolve interference concerns, "the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned."[159]

58. We find that, under the first prong of the Commission's section 1.925(b)(3) waiver standard, expanding the scope of the previously granted waiver of section 90.723(f)'s coordination requirements will serve the public interest in rail safety and spectrum efficiency by facilitating the deployment of additional rail safety applications in the 220 MHz Band, and that the underlying purpose of the rule—to limit interference—would not be served by strict application here.[160] Consistent with the *2015 Waiver Order* and to ensure that potentially affected licensees have sufficient time to consider the impact of transmitters using increased height or power under a waiver of section 90.729(b), we will require PTC-220 to provide at least 30 days' prior written notice of a planned deployment of a waiver-enabled transmitter to Phase II licensees, within 200 kHz and 20 kilometers of a proposed transmitter, that would otherwise be covered by section 90.723(f)'s coordination requirements. The notice must be delivered by the means, and include the information, specified above.[161]

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[152] *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 14569, 14617, para. 100 (1998).

[153] *See 2015 Waiver Order*, 30 FCC Rcd at 2287-89, paras. 22-27.

[154] *Id*. at 2291, para. 36.

[155] *Id*.

[156] *Id*., para. 37.

[157] 47 CFR § 90.173(b).

[158] *Id*.

[159] *Id*.

[160] 47 CFR § 1.925(b)(3)(i). The Appendix to this Order lists the licenses subject to today's modification of the section 90.723(f) rule waiver.

[161] *See supra* para. 52. We remind PTC-220 that under section 90.173(b), it must "cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities." 47 CFR § 90.173(b).

3. Enhanced Interference Mitigation Procedures

59. PTC-220 does not seek any changes to the existing rule waivers' technical parameters under which the railroads' 220 MHz Band PTC network currently operates.[162] PTC-220 states that it expects no increased likelihood of harmful interference from deployment of non-PTC rail safety systems in the 220 MHz Band.[163] However, to address any interference-related concerns from expanded operations in the 220 MHz Band, PTC-220 states that it is willing to follow the enhanced interference mitigation procedures that the Commission adopted when it granted PTC-220 a waiver of certain rules to enable deployment of PTC and other rail safety systems using PTC-220's adjacent AMTS Band spectrum.[164]

60. Consistent with that commitment and as a condition of today's modification of the six rule waivers, we will require that PTC-220 do the following:

- prior to commencing service, establish and maintain a 24-hour helpdesk to receive reports of potential interference;
- provide each potentially affected licensee contact information to report possible interference to the helpdesk;
- provide a party reporting interference a unique tracking number for each interference report;
- investigate any reported interference within 30 calendar days of receiving a report; and
- resolve any interference caused by its operations at its own expense within 60 calendar days of receiving an interference report.[165]

Railroads leasing spectrum from PTC-220 to deploy non-PTC rail safety applications must also comply with these conditions.[166]

4. Historic Preservation, Environmental, and Related Requirements

61. To comply with their obligations under the Rail Safety Act to implement interoperable PTC systems, U.S. freight railroads had to deploy more than 20,000 wayside poles (vertical structures used to support fixed wireless antennas) along their rights-of-way—every one to three miles—subject to the PTC mandate.[167] In 2014, the Bureau announced that the Advisory Council on Historic Preservation (ACHP)[168] had adopted the *PTC Program Comment* to help expedite the deployment of PTC wayside poles.[169] The *PTC Program Comment* provides the Commission an alternative way to comply with its

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[162] Waiver Modification Request Supplement at 3.

[163] Polivka Declaration at 12, para. 27 (noting that "[b]ecause PTC-220 is not seeking any changes to the technical parameters under which the railroads' 220 MHz band network currently operates, there is no reason to expect an increased likelihood of harmful interference").

[164] Waiver Modification Request Supplement at 8 (stating that "[b]ecause PTC-220's waiver modification request for its 220 MHz band licenses seeks the same treatment as its 219 MHz band licenses, PTC-220 is willing to commit to the 219 MHz band interference mitigation procedures [] for its 220 MHz band licenses").

[165] *2021 AMTS Waiver Order*, 2021 WL 6135309, *14, para. 52.

[166] PTC-220 is responsible for resolving any inference caused by tenant railroads (such as Amtrak), which use its 220 MHz spectrum for non-PTC rail safety applications on lines controlled by PTC-220.

[167] Waiver Modification Request Supplement at 8.

[168] The ACHP is an independent federal agency that promotes the preservation, enhancement, and productive use of the nation's historic resources, and advises the President and Congress on national historic preservation policy. ACHP, *Mission Statement*, https://www.achp.gov/about (last visited Jan. 26, 2023).

[169] *Wireless Telecommunications Bureau Announces Adoption of Program Comment to Govern Review of Positive Train Control Wayside Facilities*, WT Docket No. 13-240, Public Notice, 29 FCC Rcd 5340 (WTB 2014)

(continued….)

responsibilities under section 106 of the National Historic Preservation Act (NHPA),[170] regarding the possible effects of PTC wayside poles and associated infrastructure on historic properties.[171]

62. The *PTC Program Comment* only applies to: (1) "PTC wayside poles that are no taller than 75 feet (including their antenna) located within existing railroad rights-of-way"; and (2) "PTC wayside pole associated equipment cabinets and other supporting infrastructure (including collocated antennas) also located within existing railroad rights-of-way."[172] Given the scope of the *PTC Program Comment*, as PTC-220 acknowledges, it may not avail itself of the *PTC Program Comment* when deploying non-PTC wayside poles or supporting infrastructure.[173]

63. We emphasize that today's waiver relief does not relieve PTC-220 of its obligations to comply with the Commission's rules implementing the National Environmental Policy Act of 1969 (NEPA),[174] the NHPA,[175] and other applicable laws.[176] Similarly, PTC-220 must comply with the Commission's tower siting requirements.[177]

IV. CONCLUSION AND ORDERING CLAUSES

64. Today's action will further the public interest by enabling PTC-220's seven member railroads, their tenants, and the many railroads that lease spectrum from PTC-220 to deploy an array of innovative rail safety systems across the country using PTC-220's extensive 220 MHz Band spectrum holdings. We emphasize that today's expanded waiver relief is limited to the deployment of additional

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(announcing "Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure") (*PTC Program Comment*).

[170] 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f).

[171] The *PTC Program Comment* generally does not require the Commission to consider the effects on historic properties of: (1) most PTC wayside poles and infrastructure within 500 feet of certain existing structures; (2) most collocations of PTC wayside antennas on existing railroad infrastructure; and (3) most PTC wayside poles and infrastructure within freight yards. *See generally PTC Program Comment*. The *PTC Program Comment* "also relieves other federal agencies from the need to conduct separate Section 106 reviews regarding the effects of [PTC wayside] poles and infrastructure." *Id*., 29 FCC Rcd at 5344.

[172] *Id*. at 5346-47, Section III.

[173] PTC-220 states that its Waiver Modification Request "should not be construed as a request to expand the *PTC Program Comment* to non-PTC railroad safety infrastructure that is presently not covered." Waiver Modification Request Supplement at 9.

[174] 42 U.S.C. §§ 4321–4335; 47 CFR §§ 1.1301-1.1320. *See also* 47 CFR § 17.4(c).

[175] 54 U.S.C. § 300101 et seq.; *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, 47 CFR pt. 1, Appx. B.; *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission*, 47 CFR pt. 1, Appx. C. The Commission provides its Tower Construction Notification System (TCNS) as a tool for applicants to help facilitate communication with Indian Tribes and Native Hawaiian Organizations (NHOs) which enables the review required by section 106 of the NHPA. The TCNS also provides Tribes/NHOs and State Historic Preservation Officers with early notification of proposed towers to facilitate compliance with the Commission's rules and streamline the review process for construction of towers and other Commission undertakings.

[176] The Commission must comply, for example, with the Endangered Species Act (16 U.S.C. § 1531 *et seq.*), and PTC-220 must comply with the Commission's implementing regulations when deploying wireless communications infrastructure. *See* 47 CFR § 1.1307(a)(3). Section 1.1307 of the Commission's rules requires applicants, including licensees and tower owners, to submit an environmental assessment if the proposed facilities might have a significant environmental effect. 47 CFR § 1.1307.

[177] For example, antenna structures that require notice to the Federal Aviation Administration due to physical obstruction must be registered in the Commission's Antenna Structure Registration system prior to construction. 47 CFR §§ 17.4(a), 17.7.

rail safety systems.[178] Moreover, to ensure that today's waiver relief does not impact current and possible future PTC deployments, we will require PTC-220 to afford PTC operations the highest priority on its 220 MHz Band spectrum.[179]

65. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4 (j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), and 303(r), and sections 0.331, 1.3, and 1.925 of the Commission's rules, 47 CFR §§ 0.331, 1.3, and 1.925, that the Request for Waiver filed by PTC-220, LLC on March 23, 2022, as supplemented by letter dated September 9, 2022—File Nos. 0009965899 (WQSK949), 0009965921 (WQXK673), 0009966558 (WQXK674), 0009966588 (WRJC621), 0009966636 (WRHX600), 0009966711 (WRHX599), 0009966751 (WPWY753), 0009966768 (WPFR284), 0009966783 (WPFP444), 0009966805 (WPOI701), 0009966809 (WREY457), 0009966816 (WREY456), 0009966819 (WRCS461), 0009966838 (WRCS460), 0009966889 (WRCS459), 0009966898 (WQSL327), 0009966910 (WQSL326), 0009966953 (WQSJ981), 0009966992 (WPOI774), 0009967013 (WPVL860), 0009967024 (WPOJ281), 0009967038 (WPOJ280), 0009967046 (WPOJ279), 0009967067 (WPOJ271), 0009967079 (WPOI924), 0009967085 (WPOI800), 0009967092 (WPOI774), 0009967105 (WPOI701), 0009967348 (WPOI705), 0009967355 (WPOI708), 0009967359 (WPOI706), 0009967369 (WPOI704), 0009967375 (WPOI703), 0009967387 (WPOI702), 0010183520 (WQXL586), 0010183541 (WRCR206), and 0010183542 (WPOI710)—IS HEREBY GRANTED to the extent provided and subject to all conditions enumerated above.[180]

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

[178] *See* Waiver Modification Request at 15, n.55 (stating that "PTC-220's request would not extend to applications wholly unrelated to rail safety [such as] retail commercial broadband service to consumers").

[179] *See supra* Section III.A.

[180] AAR leases spectrum to PTC-220 under WPOI702 (L000032846), WPOI703 (L000032847), WPOI704 (L000032848), WPOI705 (L000032849), WPOI706 (L000032850), and WPOI708 (L000032851).

APPENDIX

Modified Rule Waivers*

1. 0009965899 (WQSK949; NW): 1, 2, 3, 4
2. 0009965921 (WQXK673; REAG): 2, 3, 4, 5
3. 0009966558 (WQXK674: NW): 2, 3, 4
4. 0009966588 (WRJC621; REAG): 2, 3, 4, 5
5. 0009966636 (WRHX600; REAG): 2, 3, 4, 5
6. 0009966711 (WRHX599; REAG): 2, 3, 4, 5
7. 0009966751 (WPWY753; NW): 1, 2, 3, 4, 5
8. 0009966768 (WPFR284; NW): 1, 2, 3, 4, 5
9. 0009966783 (WPFP444; NW): 1, 2, 3, 4, 5
10. 0009966805 (WREY458; REAG): 2, 3, 4, 5
11. 0009966809 (WREY457; REAG): 2, 3, 4, 5
12. 0009966816 (WREY456; REAG): 2, 3, 4, 5
13. 0009966819 (WRCS461; REAG): 2, 3, 4, 5
14. 0009966838 (WRCS460; REAG): 2, 3, 4, 5
15. 0009966889 (WRCS459 NW): 2, 3, 4
16. 0009966898 (WQSL327; REAG): 2, 3, 4, 5
17. 0009966910 (WQSL326; NW): 2, 3, 4,
18. 0009966953 (WQSJ981; REAG): 2, 3, 4, 5
19. 0009966992 (WQSJ980; NW): 2, 3, 4
20. 0009967013 (WPVL860; BEA): 2, 3, 4, 5
21. 0009967024 (WPOJ281; BEA): 2, 3, 4, 5
22. 0009967038 (WPOJ280; BEA): 2, 3, 4, 5
23. 0009967046 (WPOJ279; BEA): 2, 3, 4, 5
24. 0009967067 (WPOJ271; NW): 2, 3, 4, 5
25. 0009967079 (WPOI924; BEA): 2, 3, 4, 5
26. 0009967085 (WPOI800; BEA): 2, 3, 4, 5
27. 0009967092 (WPOI774; BEA): 2, 3, 4, 5
28. 0009967105 (WPOI701; NW): 2, 3, 4, 5
29. 0009967348 (WPOI705; REAG) (AAR/Spectrum Lease): 2, 3, 4, 5
30. 0009967355 (WPOI708; REAG) (AAR/Spectrum Lease): 2, 3, 4, 5
31. 0009967359 (WPOI706; REAG) (AAR/Spectrum Lease): 2, 3, 4, 5
32. 0009967369 (WPOI704; REAG) (AAR/Spectrum Lease): 2, 3, 4, 5
33. 0009967375 (WPOI703; REAG) (AAR/Spectrum Lease): 2, 3, 4, 5
34. 0009967387 (WPOI702; REAG) (AAR/Spectrum Lease): 2, 3, 4, 5
35. 0010183520 (WQXL586; NW): 1, 2, 3, 4
36. 0010183541 (WRCR206; NW): 1, 2, 3, 4
37. 0010183542 (WPOI710; BEA): 2, 3, 4, 5

License Key: Basic Economic Area (BEA); Nationwide (NW); Regional Economic Area Grouping (REAG).

***Rule Key:** (1) 47 CFR §§ 90.713(a) and 90.717(b) (Commercial-Use Restrictions); (2) 47 CFR § 90.715 (Base/Mobile Band Configuration); (3) 47 CFR § 90.735(a) (Station Identification); (4) 47 CFR § 90.729(b) (Upper 221-222 MHz Band Segment Power/Antenna Height Limits); (5) 47 CFR § 90.723(f) (Coordination Requirements).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 23-565
Released: June 29, 2023

FCC ANNOUNCES TECHNOLOGICAL ADVISORY COUNCIL MEETING ON AUGUST 17, 2023

The Technological Advisory Council (TAC) is comprised of a diverse group of leading technology experts. It provides technical expertise to the Commission to identify important areas of innovation and develop informed technology policies supporting the United States' competitiveness in the global economy. As part of its current charter, the TAC will consider and advise the Commission on topics such as 6G, artificial intelligence, advanced spectrum sharing technologies, and emerging wireless technologies.

The next meeting of the TAC will be held on Thursday, August 17, 2023 beginning at 10:00 am ET in the Commission Meeting Room of the Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 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 TAC 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. Attendees are not required to have an appointment but must otherwise comply with protocols outlined at: https://www.fcc.gov/visit.

Dean Brenner, a former executive at Qualcomm, serves as Chairman of the Council. Martin Doczkat, Chief of the Electromagnetic Compatibility Division in the Office of Engineering and Technology, serves as the Designated Federal Officer. Sean Yun, Deputy Chief of the Electromagnetic Compatibility Division in the Office of Engineering and Technology, is the Alternate Designated Federal Officer.

More information about the TAC can be found at https://www.fcc.gov/general/technological-advisory-council. You may also contact Martin Doczkat, Designated Federal Official (DFO) for the TAC, at Martin.Doczkat@fcc.gov or (202) 418-2435.

–FCC–

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

In the Matter of	)	
	)	
Monitoring Compliance with Conditions Imposed in the Verizon-TracFone Transfer of Control Order	)	WT Docket No. 22-210
	)	
	)	
	)	
	)	
	)	

PROTECTIVE ORDER

Adopted: June 29, 2023 **Released: June 29, 2023**

By the Bureau Chief, Wireless Telecommunications Bureau:

1. In this Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that has been or may be filed with respect to monitoring compliance with the conditions imposed in the Verizon-TracFone transfer of control order,[1] in particular, the periodic reports filed by Verizon and by the Independent Compliance Monitor, and (ii) more strictly limit access to certain particularly competitively sensitive information, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. The information submitted by participants in this proceeding and information we request as relevant and material to the issues raised in connection with verifying compliance with the *Verizon TracFone Order* constitute the record on which the Commission must base its determinations. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to do so while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private

[1] On November 21, 2021 the Federal Communications Commission ("FCC" or "Commission") released the Memorandum Opinion and Order in the matter of the Application of Verizon Communications Inc. ("Verizon") and América Móvil, S.A.B. de C.V. ("América Móvil") for Consent to Transfer Control of International Section 214 Authorization, in which order the Commission granted the application subject to conditions. *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 21-112, Memorandum Opinion and Order, FCC 21-121, at 54, paras. 151-54 (Nov. 22, 2021) (*Verizon-Tracfone Order*). On May 23, 2022, the Wireless Telecommunications Bureau ("Bureau") announced through a Public Notice the opening of a new docket for the purpose of monitoring compliance with the conditions imposed by the Order. *Monitoring Compliance with Conditions Imposed in the Verizon-TracFone Transfer of Control Order*, WT Docket No 22-210, Public Notice, DA 22-570 (WTB 2021).

interests involved, we conclude that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of justice."[2]

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

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix B hereto.

"Competitive Decision-Making" means a person's activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

"Confidential Information" means information that is not otherwise available from publicly available sources and that is subject to withholding under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules,[3] that such information is not entitled to confidential treatment.

"Counsel" means In-House Counsel and Outside Counsel of Record.

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

"Highly Confidential Information" means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to withholding under the FOIA and the Commission's implementing rules; and that the Submitting Party or a Third-Party Interest Holder claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party or Third-Party Interest Holder does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix A to this Protective Order, as the same may be amended from time to time; unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules, that any such information is not entitled to confidential treatment.

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

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney employed by a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert

[2] 47 U.S.C. § 154(j).

[3] 47 CFR §§ 0.459, 0.461.

employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

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

"Redacted Highly Confidential Document" means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

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

"Stamped Confidential Document" means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 22-210 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Confidential Document," a Submitting Party signifies and represents that it contains Confidential Information.

"Stamped Highly Confidential Document" means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 22-210 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies and represents that it contains Highly Confidential Information.

"Submitting Party" means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

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

3. *Designation of Information as Confidential or Highly Confidential.* A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that additional types of information should be designated as Highly Confidential, the Submitting Party shall submit a request to amend this order along with a supporting explanation. To the extent the request is granted, an amended order will be issued. In addition, before a

Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party's representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Protective Order. By designating documents and information as Confidential or Highly 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.[4]

4. *Challenge to Designation*. Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days and include a justification for treating the information as Confidential or Highly Confidential, as appropriate. 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.[5] Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.[6]

5. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents*. A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 22-210 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 22-210 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION", as appropriate. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System ("ECFS") a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter.[7] Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly Confidential Document and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Confidential Information or Highly Confidential Information and non-confidential information, only the Confidential Information and Highly Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information, and the non-confidential information. In addition, two copies of each Stamped Confidential Document and Stamped Highly Confidential Document and the

[4] *See* 47 CFR § 0.459(a).

[5] *Cf.* 47 CFR §§ 0.459(g), 0.461(i).

[6] *See* 47 CFR §§ 0.459(h), 0.461.

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

accompanying cover letter shall be delivered, as directed by Commission staff, to Stacy Ferraro, Stacy.Ferraro@fcc.gov, (202) 418-0795, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.

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

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

8. *Procedure for Objecting to the Disclosure of Confidential Information and Highly 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 or Highly 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 or Highly 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 or Highly 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 or Highly 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 or Highly Confidential Information.[9] If an objection

[8] This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential and Highly 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 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 or Highly 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

(continued….)

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 or Highly Confidential Information by the Reviewing Party until the objection is resolved.

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

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

11. *Use of Confidential and Highly Confidential Information*. Persons obtaining access to Confidential and Highly Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so either by redacting any such Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Protective Order, as appropriate, or as otherwise permitted by law.

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

(Continued from previous page)
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 or Highly Confidential Information shall be made available to the Reviewing Party.

Confidential Information or Highly Confidential Information, respectively, unless the Commission determines otherwise.

13. *Filings with the Commission*. A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 22-210 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WT DOCKET NO. 22-210 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing"), to the Commission via ECFS.[10] The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information or Highly Confidential Information, only the Confidential Information or Highly Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information, the Highly Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Stacy Ferraro, Stacy.Ferraro@fcc.gov, (202) 418-0795, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

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

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

16. *Requests for Additional Disclosure*. If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.[11]

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

[11] 47 CFR §§ 0.442, 0.461.

17. *Client Consultation*. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information to which they have access under this Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

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

19. *Subpoena by Courts, Departments*, *or Agencies*. If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, or Highly Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information, or Highly Confidential Information.

20. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

21. *Termination of Proceeding*. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly

Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions*. Questions concerning this Protective Order should be addressed to Stacy Ferraro, Stacy.Ferraro@fcc.gov, (202) 418-0795, Wireless Telecommunications Bureau, Federal Communications Commission, or to Joel Rabinovitz, Joel.Rabinovitz@fcc.gov, (202) 418-0689, Transaction Team, Office of General Counsel.

23. *Authority*. This Order is issued pursuant to Sections 4(j), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 214 and 310(d), and authority delegated under Section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Bureau Chief
Wireless Telecommunications Bureau

APPENDIX A

Highly Confidential Information and Documents

As specified in paragraphs 2 and 3 of the Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Stamped Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

1. Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (e.g., marketing, service or product agreements, agreements relating to potential mergers and acquisitions, and comparably sensitive contracts).
2. Information that discusses specific steps that will be taken to integrate companies or discussions of specific detail or disaggregated quantification of merger integration benefits or efficiencies (including costs, benefits, timeline, and risks of the integration).
3. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (e.g., business or wholesale customers), including specific pricing or contract proposals, pricing strategies, product strategies, advertising or marketing strategies, future business plans, procurement strategies, technology implementation or deployment plans and strategies (e.g., engineering capacity planning documents), plans for handling acquired customers, and human resources and staffing strategies.
4. Information that discloses the identity or characteristics of specific customers or of those a company is targeting or with whom a company is negotiating (including identifying information about specific customer facilities, information about customers' levels of demand, and information regarding pricing proposals).
5. Information that provides granular information about a Submitting Party's current or future costs, revenues, marginal revenues, market share, or customers.
6. Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including sources and methods used in these analyses, any limits on use of these analyses or data, and how such analyses or data are used.
7. Information that provides numbers of customers and revenues broken down by customer type (e.g., business) and zip code or market area (e.g., CMA/MSA/RSA, DMA, state, regional cluster).
8. Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, including churn rate data, broken down by zip code or market, and detailed information about why customers discontinue service.
9. Information that provides detailed or granular engineering capacity information or information about specific facilities, including collocation sites, cell sites, or maps of network facilities.
10. Information that provides detailed technical performance data and test results.

APPENDIX B

Acknowledgment of Confidentiality

WT Docket No. 22-210

I am seeking access to [ ] only Confidential Information or [ ] Confidential and Highly Confidential Information.

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

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

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

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

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

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

Executed this ___ day of _____, 20__.

_____

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

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

In the Matter of	)	
	)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band	)	GN Docket No. 18-122; GN Docket No. 23-97
	)	
Phase II Certification of Accelerated Relocation of Satélites Mexicanos S.A. de C.V. d/b/a Eutelsat Americas, as amended	)	

ORDER

Adopted: June 30, 2023 **Released: June 30, 2023**

By the Chief, Wireless Telecommunications Bureau:

1. With this Order, and subject to the conditions described below, the Wireless Telecommunications Bureau (WTB or Bureau) validates the Phase II Certification of Accelerated Relocation (Phase II Certification), as amended, filed by Satélites Mexicanos S.A. de C.V. d/b/a Eutelsat Americas (Eutelsat),[1] relating to the ongoing transition of the 3.7 GHz band.[2]

2. In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the 3.7-4.2 GHz band (C-band) and into the upper 200 megahertz of the band (*i.e.*, 4.0-4.2 GHz).[3] Specifically, the *3.7 GHz Report and Order* established a deadline of December 5, 2025, by which incumbent space station operators were to complete the transition of their operations to the upper 200 megahertz of the band, but it also provided an opportunity for accelerated clearing of the band by allowing eligible space station operators to voluntarily commit to relocate on a two-phased accelerated schedule, with a Phase I deadline

[1] *See* Eutelsat Americas, Phase II Certification of Accelerated Relocation, GN Docket Nos. 18-122 and 23-97 (filed June 1, 2023) (Eutelsat Phase II Certification); Eutelsat Americas Phase II Certification of Accelerated Relocation, Erratum to Exhibit C, GN Docket Nos. 18-122 and 23-97 (filed June 12, 2023) (Eutelsat Amendment). We note that in the instant Order, the Bureau is only considering the showing made in, and validating, Eutelsat's Phase II Certification, as amended. This Order is without prejudice to other issues that are or may come before the Commission or that the Commission considers properly before other fora.

[2] *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2456-57, paras. 297-300 (2020) (*3.7 GHz Report and Order*).

[3] *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

of December 5, 2021, and a Phase II deadline of December 5, 2023.[4] All five eligible space station operators elected accelerated relocation.[5]

3. By electing accelerated relocation, the eligible space station operators, among other things, voluntarily committed to perform all the tasks necessary to enable any incumbent earth station[6] that receives or sends C-band signals from or to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band.[7] The *3.7 GHz Report and Order* stated that "[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines."[8] Once the Bureau validates an eligible space station operator's Certification, the relevant Accelerated Relocation Payment (ARP) is to be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).[9]

4. The *3.7 GHz Report and Order* specified that an "eligible space station operator's satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline" and directed WTB to prescribe the form of such Certifications and any challenges by relevant stakeholders.[10] WTB was also directed to establish the process for how any challenges may impact incremental decreases in the ARP.[11] Further, "the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies," and if "credible challenges as to the space station operator's satisfaction

[4] *3.7 GHz Report and Order*, 35 FCC Rcd at 2408, para. 155; 47 CFR § 27.1412(b)(1)-(2). By the Phase I deadline of December 5, 2021, eligible space station operators were required to repack any existing services and relocate associated incumbent earth stations throughout the contiguous United States into the upper 380 megahertz of the C-band (3820-4200 MHz), and the operators must provide passband filters to block signals from the 3700-3820 MHz band to associated incumbent earth stations in 46 of the top 50 PEAs. *3.7 GHz Report and Order*, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2). By the Phase II deadline of December 5, 2023, eligible space station operators must repack any existing service and relocate associated incumbent earth stations throughout the contiguous United States into the upper 200 megahertz of the C-band (4.0-4.2 GHz), and the operators must provide passband filters to block signals from the 3700-4000 MHz band to all associated incumbent earth stations in the contiguous United States. *3.7 GHz Report and Order*, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2).

[5] *Wireless Telecommunications Bureau Announces Accelerated Clearing in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 5517 (WTB 2020).

[6] Incumbent earth stations are defined as those Fixed Satellite Service earth stations that "(1) were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS database as of November 7, 2018; and (3) have timely certified, to the extent required by the *Order* adopted in FCC 18-91 (as we clarify . . . to include certain renewal applications and license and registration applications filed through November 7, 2018), the accuracy of information on file with the Commission." *3.7 GHz Report and Order*, 35 FCC Rcd at 2392, para. 116; 47 CFR §§ 25.138(c), 27.1411(b)(3).

[7] *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 292.

[8] *Id.* at 2438, 2456, paras. 232, 297; 47 CFR § 27.1412(b).

[9] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300. Following validation, the Clearinghouse shall promptly notify the 3.7 GHz Service Licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice. *Id.*; 47 CFR § 27.1422(c). The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c).

[10] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; 47 CFR § 27.1412(g).

[11] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99. Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline. *Id.* at 2456, para. 297; 47 CFR § 27.1422(d).

of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges."[12] Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.[13] Where challenges or deficiencies are found, the Bureau will render a final decision as to the validity of the Certification no later than 60 days from its filing.[14]

5. As directed, on May 15, 2023, the Bureau issued a Public Notice implementing filing procedures for Phase II Certifications and related challenges.[15] The *Phase II Certification Procedures and Incremental Reduction PN* stated that to satisfy the Phase II deadline, the Certification must detail each action that was taken by the eligible space station operator, including the date of completion, matching that operator's Transition Plan as-updated.[16] The *Phase II Certification Procedures and Incremental Reduction PN* further stated that description should include (but is not limited to):

- The operations that were repacked to satisfy the Phase II deadline;
- The number of new satellites, if any, that the eligible space station operator launched, including the dates of launch, reaching final orbit, and start of operations;
- A description of how services were migrated to the upper portion of the band, including the pre- and post-transition frequencies that each customer occupied and now occupies;
- Any necessary technology upgrades or other solutions, such as video compression or modulation, that the eligible space station operator implemented, described on a per antenna and/or feed basis, as appropriate;
- The number and location of antennas and feeds that were transitioned to satisfy the Phase II deadline in the same format as the Relocation Coordinator's final list of Phase II incumbent earth station claims and assignments. This information should be provided in the specified format and also include the actions taken (*e.g.*, retuning and repointing, self-installations by the incumbent earth station operator) for each;
- The date of completion of the above items (with the exception of self-installations by incumbent earth station operators);
- A description of the steps that the eligible space station operator has taken to identify all associated earth stations, antennas, and feeds, and to ensure that they all are transitioned as of the date of Certification, including where the incumbent earth station operator has elected to perform a self-installation;
- Any variances from the eligible space station operator's Transition Plan, such as antennas and feeds involving circumstances beyond the control of the eligible space station operator and

[12] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(1)-(2).

[13] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

[14] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99.

[15] *See Wireless Telecommunications Bureau Announces Procedures for Filing of C-band Phase II Certifications of Accelerated Relocation and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments*, GN Docket Nos. 18-122 and 23-97, Public Notice, DA 23-408 (WTB May 15, 2023) (*Phase II Certification Procedures and Incremental Reduction PN*). The *Phase II Certification Procedures and Incremental Reduction PN* stated that: "Challenges to a Certification must be filed in GN Docket No. 23-97 within ten (10) days after the Certification is published in ECFS and the eligible space station operators' replies must be filed in that docket within five (5) days." *Id.* at 10.

[16] *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

therefore subject to a transition delay notice,[17] and antennas and feeds that are otherwise pending removal from the *March 2023 Incumbent Earth Station List PN* list which must be identified as provisional claims,[18] or antennas and feeds subject to a written agreement regarding the transition between the eligible space station operator and the incumbent earth station operator, other than self-installations by incumbent earth station operators.[19]

6. Each eligible space station operator was required to certify that it attests to the truthfulness of the above information included in its Certification and is making the Certification in good faith.[20]

7. Eutelsat submitted its Phase II Certification of Accelerated Relocation on June 1, 2023 and an erratum on June 12, 2023. The Bureau received no Challenges.

8. Eutelsat asserts that it has met all the elements required in the *Phase II Certification Procedures and Incremental Reduction PN*.[21] Specifically, Eutelsat certifies that it has repacked all of its C-band downlink transmissions within the continental U.S. (CONUS) into the upper 200 megahertz of the C-band (4000-4200 MHz).[22] Eutelsat also indicates that it has met all of its relocation obligations for a combined total of 109 earth station antennas across Phase I and Phase II markets for which it had either claimed or been assigned transition responsibility.[23]

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[17] *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294; 47 CFR 27.1412(b)(3)(i); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[18] *See International Bureau Releases Updated List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, IB Docket No. 20-205; GN Docket No. 20-305, Public Notice, DA 23-176 (IB Mar. 3, 2023) (*March 2023 Incumbent Earth Station List PN*); *International Bureau Identifies Earth Station Antennas on C-Band Incumbent List that May be Inactive or Otherwise Not Operational on the 3.7 GHz Band*, IB Docket No. 20-205, Public Notice, DA 23-237 (IB Mar. 21, 2023); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[19] Such written agreements may, for example, reflect that the earth station operator, whose station is associated with the eligible space station operator and included on its Transition Plan, has relieved said eligible space station operator of any obligation to effectuate the transition (in whole or in part, as per the agreement) of the subject earth station. *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[20] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; *Phase II Certification Procedures and Incremental Reduction PN* at 9-10. The Bureau will determine that a Certification has been made in bad faith if, for example, the certifying party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. *In Re Amend. of Section 1.17 of Commission's Rules Concerning Truthful Statements to Comm'n*, 18 FCC Rcd 4016, 4021, para. 12 (2003). In cases where it is found that the ARP was disbursed based on a Certification that the eligible space station operator had filed in bad faith, the operator may be subject to the additional consequence of having to return some or all of the ARP, depending on the circumstances. *See* 47 CFR § 27.1412(a). Certifications are subject to section 1.17 of the Commission's rules. 47 CFR § 1.17.

[21] *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

[22] Eutelsat Phase II Certification at 2.

[23] *Id*. at 2-4. Eutelsat indicates that its erratum was filed to adjust a small number of entries in its original Phase II Certification regarding the total number of feeds on the relevant antennas that varied from the number included on the Relocation Coordinator's final earth station list filed on May 24, 2023. Eutelsat claims that the erratum makes no changes to its Phase II Certification's description of Eutelsat's completion of its Phase II transition work, nor does it alter the earth station antennas and feeds claimed by or assigned to it. Eutelsat Amendment at 1-2; *see also* Letter from Sanga Chandel, RSM US LLP, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 18-122 and 23-97 (filed May 24, 2023).

9. In its Phase II Certification, Eutelsat addresses each of the eight criteria set forth in the *Phase II Certification Procedures and Incremental Reduction PN*.[24] With respect to repacking, Eutelsat claims that it has relocated all of its C-Band downlink operations in CONUS to the 4.0-4.2 GHz band.[25] Eutelsat states that it did not need to launch any new satellites to meet its Phase II accelerated relocation obligations,[26] and that it only operates four C-band satellites to serve CONUS.[27] As for migrating services to the upper portion of the band, Eutelsat asserts that this was accomplished by providing a grooming plan that tracks the pre-transition frequency and post-transition frequency for each of its CONUS C-Band downlink transmissions.[28] Eutelsat maintains that it continues to provide the "same or better service" to all its customers after the transition and that it provided duplicate dual illumination downlink services for a transitional period to minimize service interruption and facilitate migration between satellites.[29] Eutelsat further indicates that it did not need to implement any technology upgrades or video compression or modulation as part of its Phase II transition work.[30]

10. Eutelsat asserts that Exhibit C to its Phase II Certification provides the number and location of each Phase II earth station, with corresponding antenna and feeds, for which it bears transition responsibility.[31] Eutelsat further claims that all necessary relocation activities for both the claimed and assigned earth station antennas listed therein have been completed.[32] Regarding earth station transition actions taken, Eutelsat reports a combination of activities performed by its contractors, self-installations by earth station operators, and written relocation agreements.[33] The activities that Eutelsat indicates it and its contractors performed include the installation of bandpass filters and other necessary equipment, such as waveguides or low noise block downconverters, antenna repointing, and in some cases the provision of additional equipment where old and legacy equipment is no longer supported by the manufacturer.[34]

11. Eutelsat provides completion dates for the various transition steps it says that it undertook in Exhibits B and C to its Phase II Certification.[35] Eutelsat also notes that it conducted outreach efforts to

[24] *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

[25] Eutelsat Phase II Certification at 2-4.

[26] *Id*. at 4.

[27] Eutelsat indicates that it operates four C-band satellites that serve the CONUS: Eutelsat 113 West A, Eutelsat 115 West B, Eutelsat 117 West A, and Eutelsat 117 West B. *Id*. at 3.

[28] *Id*. at 4, 6-8 and Exhibit B, Eutelsat Grooming Plan.

[29] *Id*. at 4, 7.

[30] *Id*. at 4.

[31] *Id*. at 4-5.

[32] *Id*., citing Exhibit C, Eutelsat Claimed and Assigned Earth Stations. Eutelsat notes that in addition to claimed and assigned antennas, it has also tracked two antennas whose existing licenses are in the process of being modified as provisionally claimed, with the new file numbers tracked as claimed. Eutelsat states that regardless of whether the modifications are accepted, it has met all its relocation obligations for those earth station antennas. *Id*. at 13.

[33] *Id*. at 4.

[34] *Id.* at 6-8.

[35] *Id*. at 9, Exhibit B, Eutelsat Grooming Plan, and Exhibit C, Eutelsat Claimed and Assigned Earth Stations. Eutelsat specifies that completion dates are provided to identify when any necessary work was performed by Eutelsat or its contractors, but no completion dates are supplied when an earth station operator elected self-installation or when a written agreement was entered into between Eutelsat and an earth station operator relieving Eutelsat of its obligation to effectuate the transition. *Id*. at 5-6, 9.

its customers, earth station operators, other satellite operators, and the Relocation Coordinator to identify all earth stations for which it bears transition responsibility.[36]

12. Eutelsat asserts that it has no variances from its June 2023 Transition Plan,[37] but does specify two instances it argues were circumstances beyond its control during Phase I due to the refusal of incumbent earth station operators to engage with Eutelsat on relocation and where it now indicates that the transition work has since been completed.[38] Eutelsat also identifies three earth stations claimed by or assigned to Eutelsat that it says may be affected by future changes to the Incumbent Earth Station List, but in each case Eutelsat notes that either the relocation work has been completed or the operator has elected to self-install.[39] Finally, Eutelsat also references a written agreement with an earth station operator whereby such operator agreed to perform any relocation work for its twelve transportable earth stations, as well as a situation in which Eutelsat says it coordinated with the earth station operator and a third party on transition tasks relating to two earth stations used as part of the Federal Aviation Administration's Wide Area Augmentation System program.[40]

13. Based on the record and the absence of credible challenges, and as discussed in the *Phase II Certification Procedures and Incremental Reduction PN*, the Phase II Certification of Accelerated Relocation filed by Eutelsat on June 1, 2023 and amended on June 12, 2023 is hereby validated,[41] with the following condition: if after the disbursement of the ARP, the Bureau subsequently finds that Eutelsat should have transitioned additional earth stations, antennas, or feeds regardless of whether or not they were accounted for in its Transition Plan and Phase II Certification, Eutelsat will be required to complete all Phase II transition work relating to such earth stations, antennas, or feeds in a prompt and effective manner to ensure that the earth stations, antennas or feeds continue to receive substantially the same service that they were able to receive before the transition.[42]

14. ACCORDINGLY, IT IS ORDERED, that, pursuant to sections 1, 4(i), 4(j), 5, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 303(r), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331, this Order IS HEREBY ADOPTED, and the above-captioned Phase II Certification of Accelerated Relocation is HEREBY VALIDATED.

15. IT IS FURTHER ORDERED that the Relocation Payment Clearinghouse shall promptly notify the 3.7 GHz Service Licensees that the Bureau has validated the above-captioned Phase II Certification of Accelerated Relocation.

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[36] *Id*. at 10-12.

[37] *Id*. at 13.

[38] *Id*.

[39] *Id*.

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

[41] Although the Bureau validates Eutelsat's Phase II Certification, as amended, in the absence of Challenges or other contrary evidence, we make no specific findings as to its Phase II transition performance.

[42] *Phase II Certification Procedures and Incremental Reduction PN* at 7-8, 10; *see* 47 CFR § 27.1412(a) ("Eligible space station operators are responsible for all necessary actions . . . to migrate the existing services of incumbent earth stations in CONUS to the 4000-4200 MHz band (unless the incumbent earth station opts out of the formal relocation process, per paragraph (e) of this section), as of December 5, 2025. Eligible space station operators that fail to do so will be in violation of the conditions of their license authorization and potentially subject to forfeitures and other sanctions"). The obligation to remediate is independent from, and without prejudice to, any determination that the Certification (or any subsequent remediation effort) was made in bad faith. *Phase II Certification Procedures and Incremental Reduction PN* at 10.

16. IT IS FURTHER ORDERED that the 3.7 GHz Service Licensees shall pay their portion of the relevant Phase II Accelerated Relocation Payment to the Clearinghouse within sixty days of receiving notice from the Clearinghouse, and the Clearinghouse shall disburse the relevant Phase II Accelerated Relocation Payment as set forth in the *3.7 GHz Report and Order* within seven days of receiving the payment from the 3.7 GHz Service Licensees.

17. IT IS FURTHER ORDERED that Eutelsat must complete all Phase II transition work for any earth stations, antennas, or feeds later determined to be associated with Eutelsat Americas, regardless of whether they were accounted for in its Transition Plan and Phase II Certification, in a prompt and effective manner.

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331, and the *3.7 GHz Report and Order*, and is effective on release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

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

In the Matter of	)	
	)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band	)	GN Docket No. 18-122; GN Docket No. 23-97
	)	
Phase II Certification of Accelerated Relocation of Telesat Spectrum Corporation	)	
	)	
	)	

ORDER

Adopted: June 30, 2023 **Released: June 30, 2023**

By the Chief, Wireless Telecommunications Bureau:

1. With this Order, and subject to the conditions described below, the Wireless Telecommunications Bureau (WTB or Bureau) validates the Phase II Certification of Accelerated Relocation (Phase II Certification) filed by Telesat Spectrum Corporation (Telesat)[1] relating to the ongoing transition of the 3.7 GHz band.[2]

2. In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the 3.7-4.2 GHz band (C-band) and into the upper 200 megahertz of the band (*i.e.*, 4.0-4.2 GHz).[3] Specifically, the *3.7 GHz Report and Order* established a deadline of December 5, 2025, by which incumbent space station operators were to complete the transition of their operations to the upper 200 megahertz of the band, but it also provided an opportunity for accelerated clearing of the band by allowing eligible space station operators to voluntarily commit to relocate on a two-phased accelerated schedule, with a Phase I deadline

[1] *See* Telesat Spectrum Corporation, Certification of Accelerated Relocation, GN Docket Nos. 18-122 and 23-97 (filed June 1, 2023) (Telesat Phase II Certification). The Telesat Phase II Certification was jointly made by Telesat Spectrum Corporation and its parent entity, Telesat Canada. In the instant Order, the Bureau is only considering the showing made in, and validating, Telesat's Phase II Certification. This Order is without prejudice to other issues that are or may come before the Commission or that the Commission considers properly before other fora.

[2] *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2456-57, paras. 297-300 (2020) (*3.7 GHz Report and Order*).

[3] *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

of December 5, 2021, and a Phase II deadline of December 5, 2023.[4] All five eligible space station operators elected accelerated relocation.[5]

3. By electing accelerated relocation, the eligible space station operators, among other things, voluntarily committed to perform all the tasks necessary to enable any incumbent earth station[6] that receives or sends C-band signals from or to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band.[7] The *3.7 GHz Report and Order* stated that "[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines."[8] Once the Bureau validates an eligible space station operator's Certification, the relevant Accelerated Relocation Payment (ARP) is to be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).[9]

4. The *3.7 GHz Report and Order* specified that an "eligible space station operator's satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline" and directed WTB to prescribe the form of such Certifications and any challenges by relevant stakeholders.[10] WTB was also directed to establish the process for how any challenges may impact incremental decreases in the ARP.[11] Further, "the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies," and if "credible challenges as to the space station operator's satisfaction

[4] *3.7 GHz Report and Order*, 35 FCC Rcd at 2408, para. 155; 47 CFR § 27.1412(b)(1)-(2). By the Phase I deadline of December 5, 2021, eligible space station operators were required to repack any existing services and relocate associated incumbent earth stations throughout the contiguous United States into the upper 380 megahertz of the C-band (3820-4200 MHz), and the operators must provide passband filters to block signals from the 3700-3820 MHz band to associated incumbent earth stations in 46 of the top 50 PEAs. *3.7 GHz Report and Order*, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2). By the Phase II deadline of December 5, 2023, eligible space station operators must repack any existing service and relocate associated incumbent earth stations throughout the contiguous United States into the upper 200 megahertz of the C-band (4.0-4.2 GHz), and the operators must provide passband filters to block signals from the 3700-4000 MHz band to all associated incumbent earth stations in the contiguous United States. *3.7 GHz Report and Order*, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2).

[5] *Wireless Telecommunications Bureau Announces Accelerated Clearing in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 5517 (WTB 2020).

[6] Incumbent earth stations are defined as those Fixed Satellite Service earth stations that "(1) were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS database as of November 7, 2018; and (3) have timely certified, to the extent required by the *Order* adopted in FCC 18-91 (as we clarify . . . to include certain renewal applications and license and registration applications filed through November 7, 2018), the accuracy of information on file with the Commission." *3.7 GHz Report and Order*, 35 FCC Rcd at 2392, para. 116; 47 CFR §§ 25.138(c), 27.1411(b)(3).

[7] *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 292.

[8] *Id.* at 2438, 2456, paras. 232, 297; 47 CFR § 27.1412(b).

[9] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300. Following validation, the Clearinghouse shall promptly notify the 3.7 GHz Service Licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice. *Id.*; 47 CFR § 27.1422(c). The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c).

[10] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; 47 CFR § 27.1412(g).

[11] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99. Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline. *Id.* at 2456, para. 297; 47 CFR § 27.1422(d).

of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges."[12] Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.[13] Where challenges or deficiencies are found, the Bureau will render a final decision as to the validity of the Certification no later than 60 days from its filing.[14]

5. As directed, on May 15, 2023, the Bureau issued a Public Notice implementing filing procedures for Phase II Certifications and related challenges.[15] The *Phase II Certification Procedures and Incremental Reduction PN* stated that to satisfy the Phase II deadline, the Certification must detail each action that was taken by the eligible space station operator, including the date of completion, matching that operator's Transition Plan as-updated.[16] The *Phase II Certification Procedures and Incremental Reduction PN* further stated that this description should include (but is not limited to):

- The operations that were repacked to satisfy the Phase II deadline;
- The number of new satellites, if any, that the eligible space station operator launched, including the dates of launch, reaching final orbit, and start of operations;
- A description of how services were migrated to the upper portion of the band, including the pre- and post-transition frequencies that each customer occupied and now occupies;
- Any necessary technology upgrades or other solutions, such as video compression or modulation, that the eligible space station operator implemented, described on a per antenna and/or feed basis, as appropriate;
- The number and location of antennas and feeds that were transitioned to satisfy the Phase II deadline in the same format as the Relocation Coordinator's final list of Phase II incumbent earth station claims and assignments. This information should be provided in the specified format and also include the actions taken (*e.g.*, retuning and repointing, self-installations by the incumbent earth station operator) for each;
- The date of completion of the above items (with the exception of self-installations by incumbent earth station operators);
- A description of the steps that the eligible space station operator has taken to identify all associated earth stations, antennas, and feeds, and to ensure that they all are transitioned as of the date of Certification, including where the incumbent earth station operator has elected to perform a self-installation;
- Any variances from the eligible space station operator's Transition Plan, such as antennas and feeds involving circumstances beyond the control of the eligible space station operator and

[12] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(1)-(2).

[13] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

[14] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99.

[15] *See Wireless Telecommunications Bureau Announces Procedures for Filing of C-band Phase II Certifications of Accelerated Relocation and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments*, GN Docket Nos. 18-122 and 23-97, Public Notice, DA 23-408 (WTB May 15, 2023) (*Phase II Certification Procedures and Incremental Reduction PN*). The *Phase II Certification Procedures and Incremental Reduction PN* stated that: "Challenges to a Certification must be filed in GN Docket No. 23-97 within ten (10) days after the Certification is published in ECFS and the eligible space station operators' replies must be filed in that docket within five (5) days." *Id.* at 10.

[16] *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

therefore subject to a transition delay notice,[17] and antennas and feeds that are otherwise pending removal from the *March 2023 Incumbent Earth Station List PN* list which must be identified as provisional claims,[18] or antennas and feeds subject to a written agreement regarding the transition between the eligible space station operator and the incumbent earth station operator, other than self-installations by incumbent earth station operators.[19]

6. Each eligible space station operator was required to certify that it attests to the truthfulness of the above information included in its Certification and is making the Certification in good faith.[20]

7. Telesat submitted its Phase II Certification of Accelerated Relocation on June 1, 2023. The Bureau received no Challenges.

8. Telesat asserts that it has met all the elements required in the *Phase II Certification Procedures and Incremental Reduction PN*.[21] Specifically, Telesat certifies that, as of May 16, 2023, it completed the necessary clearing actions to satisfy the Phase II deadline through its earlier migration of C-band customer transponder services into the upper 200 megahertz of the C-band (4000-4200 MHz) and additional work to transition incumbent C-band earth stations.[22]

9. In its Certification, Telesat addresses each of the eight criteria set forth in the *Phase II Certification Procedures and Incremental Reduction PN*. With respect to repacking, Telesat states that, as part of the Phase I transition process, it had previously moved the carriers for two customers that were transmitting to earth stations below 4000 MHz to the upper portion of the C-band.[23] Telesat describes this earlier migration process, as well as the pre- and post-transition frequencies used to move these carriers to the upper portion of the 4000 MHz band, and states that no additional movement of carriers was

[17] *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294; 47 CFR § 27.1412(b)(3)(i); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[18] *See International Bureau Releases Updated List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, IB Docket No. 20-205; GN Docket No. 20-305, Public Notice, DA 23-176 (IB Mar. 3, 2023) (*March 2023 Incumbent Earth Station List PN*); *International Bureau Identifies Earth Station Antennas on C-Band Incumbent List that May be Inactive or Otherwise Not Operational on the 3.7 GHz Band*, IB Docket No. 20-205, Public Notice, DA 23-237 (IB Mar. 21, 2023); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[19] Such written agreements may, for example, reflect that the earth station operator, whose station is associated with the eligible space station operator and included on its Transition Plan, has relieved said eligible space station operator of any obligation to effectuate the transition (in whole or in part, as per the agreement) of the subject earth station. *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[20] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; *Phase II Certification Procedures and Incremental Reduction PN* at 9-10. The Bureau will determine that a Certification has been made in bad faith if, for example, the certifying party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. *In Re Amend. of Section 1.17 of Commission's Rules Concerning Truthful Statements to Comm'n*, 18 FCC Rcd 4016, 4021, para. 12 (2003). In cases where it is found that the ARP was disbursed based on a Certification that the eligible space station operator had filed in bad faith, the operator may be subject to the additional consequence of having to return some or all of the ARP, depending on the circumstances. *See* 47 CFR § 27.1412(a). Certifications are subject to section 1.17 of the Commission's rules. 47 CFR § 1.17.

[21] *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

[22] Telesat Phase II Certification at 1, 4.

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

necessary as part of its Phase II clearing activities.[24] Telesat also explains that it did not need to launch any new satellites, nor did it have to implement any technology upgrades or other solutions, such as video compression or modulation, to complete its Phase II transition.[25]

10. Telesat indicates that Tables 2 and 3 to its Phase II Certification identify the earth stations for which it was responsible for Phase II transition work, noting where earth station operators performed self-installations as well as instances where Telesat says it performed filtering and retuning work for claimed and assigned earth stations, along with the relevant completion dates.[26] Telesat provides additional completion date information for its transition work in Table 1, and details the steps it undertook to identify all associated earth stations, antennas, and feeds.[27] Finally, Telesat notes that there were no variances from its final Transition Plan.[28]

11. Based on the record and the absence of credible challenges, and as discussed in the *Phase II Certification Procedures and Incremental Reduction PN*, the Phase II Certification of Accelerated Relocation filed by Telesat on June 1, 2023, is hereby validated,[29] with the following condition: if after the disbursement of the ARP, the Bureau subsequently finds that Telesat should have transitioned additional earth stations, antennas, or feeds regardless of whether or not they were accounted for in its Transition Plan and Phase II Certification, Telesat will be required to complete all Phase II transition work relating to such earth stations, antennas, or feeds in a prompt and effective manner to ensure that the earth stations, antennas or feeds continue to receive substantially the same service that they were able to receive before the transition.[30]

12. ACCORDINGLY, IT IS ORDERED, that, pursuant to sections 1, 4(i), 4(j), 5, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 303(r), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331, this Order IS HEREBY ADOPTED, and the above-captioned Phase II Certification of Accelerated Relocation is HEREBY VALIDATED.

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[24] Telesat Phase II Certification at 1-2, Table 1 (showing Telesat's migration of space segment services from below 4000 MHz to above 4000 MHz for its Phase I and II PEAs). Telesat states that all other space segment services received in the contiguous United States were already operating above 4000 MHz. *Id.* at 1-2.

[25] *Id*. at 2.

[26] *Id*. at 2-4, Tables 2-3. Telesat notes that in addition to claimed and assigned antennas, it has also tracked three antennas whose existing licenses are in the process of being updated as provisionally claimed, with the new file numbers tracked as claimed and assigned. Telesat asserts that once the new license file numbers' status changes to current, the old ones that are provisionally claimed will drop off, and there will be no change to the total number of antennas that have been claimed, assigned or transitioned, nor additional transition work required. *Id*. at 3, n.10.

[27] *Id*. at 2-4.

[28] *Id*. at 4.

[29] Although the Bureau validates Telesat's Phase II Certification in the absence of Challenges or other contrary evidence, we make no specific findings as to its Phase II transition performance.

[30] *Phase II Certification Procedures and Incremental Reduction PN* at 7-8, 10; *see* 47 CFR § 27.1412(a) ("Eligible space station operators are responsible for all necessary actions . . . to migrate the existing services of incumbent earth stations in CONUS to the 4000-4200 MHz band (unless the incumbent earth station opts out of the formal relocation process, per paragraph (e) of this section), as of December 5, 2025. Eligible space station operators that fail to do so will be in violation of the conditions of their license authorization and potentially subject to forfeitures and other sanctions"). The obligation to remediate is independent from, and without prejudice to, any determination that the Certification (or any subsequent remediation effort) was made in bad faith. *Phase II Certification Procedures and Incremental Reduction PN* at 10.

13. IT IS FURTHER ORDERED that the Relocation Payment Clearinghouse shall promptly notify the 3.7 GHz Service Licensees that the Bureau has validated the above-captioned Phase II Certification of Accelerated Relocation.

14. IT IS FURTHER ORDERED that the 3.7 GHz Service Licensees shall pay their portion of the relevant Phase II Accelerated Relocation Payment to the Clearinghouse within sixty days of receiving notice from the Clearinghouse, and the Clearinghouse shall disburse the relevant Phase II Accelerated Relocation Payment as set forth in the *3.7 GHz Report and Order* within seven days of receiving the payment from the 3.7 GHz Service Licensees.

15. IT IS FURTHER ORDERED that Telesat must complete all Phase II transition work for any earth stations, antennas, or feeds later determined to be associated with Telesat, regardless of whether they were accounted for in its Transition Plan and Phase II Certification, in a prompt and effective manner.

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331, and the *3.7 GHz Report and Order*, and is effective on release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

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

In the Matter of	)	
	)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band	)	GN Docket No. 18-122; GN Docket No. 23-97
	)	
Phase II Certification of Accelerated Relocation of Embratel TVSAT Telecomunicações S.A.	)	
	)	
	)	

ORDER

Adopted: June 30, 2023 **Released: June 30, 2023**

By the Chief, Wireless Telecommunications Bureau:

1. With this Order, and subject to the conditions described below, the Wireless Telecommunications Bureau (WTB or Bureau) validates the Phase II Certification of Accelerated Relocation (Phase II Certification) filed by Embratel TVSAT Telecomunicações S.A. (Embratel)[1] relating to the ongoing transition of the 3.7 GHz band.[2]

2. In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the 3.7-4.2 GHz band (C-band) and into the upper 200 megahertz of the band (*i.e.*, 4.0-4.2 GHz).[3] Specifically, the *3.7 GHz Report and Order* established a deadline of December 5, 2025, by which incumbent space station operators were to complete the transition of their operations to the upper 200 megahertz of the band, but it also provided an opportunity for accelerated clearing of the band by allowing eligible space station operators to voluntarily commit to relocate on a two-phased accelerated schedule, with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.[4] All five eligible space station operators elected accelerated relocation.[5]

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[1] *See* Embratel TVSAT Telecomunicações S.A., Certification of Accelerated Relocation for Phase II, GN Docket Nos. 18-122 and 23-97 (filed June 1, 2023) (Embratel Phase II Certification). In the instant Order, the Bureau is only considering the showing made in, and validating, Embratel's Phase II Certification. This Order is without prejudice to other issues that are or may come before the Commission or that the Commission considers properly before other fora.

[2] *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2456-57, paras. 297-300 (2020) (*3.7 GHz Report and Order*).

[3] *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

[4] *3.7 GHz Report and Order*, 35 FCC Rcd at 2408, para. 155; 47 CFR § 27.1412(b)(1)-(2). By the Phase I deadline of December 5, 2021, eligible space station operators were required to repack any existing services and relocate associated incumbent earth stations throughout the contiguous United States into the upper 380 megahertz of the C-band (3820-4200 MHz), and the operators must provide passband filters to block signals from the 3700-3820 MHz band to associated incumbent earth stations in 46 of the top 50 PEAs. *3.7 GHz Report and Order*, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2). By the Phase II deadline of December 5, 2023, eligible space station operators must repack any existing service and relocate associated incumbent earth stations throughout the contiguous United States into the upper 200 megahertz of the C-band (4.0-4.2 GHz), and the operators must provide

(continued….)

3. By electing accelerated relocation, the eligible space station operators, among other things, voluntarily committed to perform all the tasks necessary to enable any incumbent earth station[6] that receives or sends C-band signals from or to a space station owned by that operator to maintain that functionality in the upper 200 megahertz of the band.[7] The *3.7 GHz Report and Order* stated that "[t]o the extent eligible space station operators can meet the Phase I and Phase II Accelerated Relocation Deadlines, they will be eligible to receive the accelerated relocation payments associated with those deadlines."[8] Once the Bureau validates an eligible space station operator's Certification, the relevant Accelerated Relocation Payment (ARP) is to be disbursed by the Relocation Payment Clearinghouse (Clearinghouse).[9]

4. The *3.7 GHz Report and Order* specified that an "eligible space station operator's satisfaction of the Accelerated Relocation Deadlines will be determined by the timely filing of a Certification of Accelerated Relocation demonstrating, in good faith, that it has completed the necessary clearing actions to satisfy each deadline" and directed WTB to prescribe the form of such Certifications and any challenges by relevant stakeholders.[10] WTB was also directed to establish the process for how any challenges may impact incremental decreases in the ARP.[11] Further, "the Bureau, Clearinghouse, and relevant stakeholders will have the opportunity to review the Certification of Accelerated Relocation and identify potential deficiencies," and if "credible challenges as to the space station operator's satisfaction of the relevant deadline are made, the Bureau will issue a public notice identifying such challenges."[12] Absent notice from WTB of deficiencies in the Certification within 30 days of its filing, the Certification will be deemed validated.[13] Where challenges or deficiencies are found, the Bureau will render a final decision as to the validity of the Certification no later than 60 days from its filing.[14]

(Continued from previous page)
passband filters to block signals from the 3700-4000 MHz band to all associated incumbent earth stations in the contiguous United States. *3.7 GHz Report and Order*, 35 FCC Rcd at 2414, para. 171; 47 CFR § 27.1412(b)(1)-(2).

[5] *Wireless Telecommunications Bureau Announces Accelerated Clearing in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 5517 (WTB 2020).

[6] Incumbent earth stations are defined as those Fixed Satellite Service earth stations that "(1) were operational as of April 19, 2018; (2) are licensed or registered (or had a pending application for license or registration) in the IBFS database as of November 7, 2018; and (3) have timely certified, to the extent required by the *Order* adopted in FCC 18-91 (as we clarify . . . to include certain renewal applications and license and registration applications filed through November 7, 2018), the accuracy of information on file with the Commission." *3.7 GHz Report and Order*, 35 FCC Rcd at 2392, para. 116; 47 CFR §§ 25.138(c), 27.1411(b)(3).

[7] *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 292.

[8] *Id.* at 2438, 2456, paras. 232, 297; 47 CFR § 27.1412(b).

[9] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300. Following validation, the Clearinghouse shall promptly notify the 3.7 GHz Service Licensees, who must pay the ARP to the Clearinghouse within 60 days of the notice. *Id.*; 47 CFR § 27.1422(c). The Clearinghouse must disburse the ARP to the eligible space station operator within seven (7) days of receipt. *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 300; 47 CFR § 27.1422(c).

[10] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; 47 CFR § 27.1412(g).

[11] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99. Should an eligible space station operator miss the Phase I or Phase II deadline, it may still receive a reduced, but non-zero, ARP if it otherwise meets the Certification requirements within six months after the relevant Accelerated Relocation Deadline. *Id.* at 2456, para. 297; 47 CFR § 27.1422(d).

[12] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(1)-(2).

[13] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 299; 47 CFR § 27.1412(g)(2).

[14] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, paras. 298-99.

5. As directed, on May 15, 2023, the Bureau issued a Public Notice implementing filing procedures for Phase II Certifications and related challenges.[15] The *Phase II Certification Procedures and Incremental Reduction PN* provided that, to satisfy the Phase II deadline, the Certification must detail each action that was taken by the eligible space station operator, including the date of completion, matching that operator's Transition Plan as-updated.[16] The *Phase II Certification Procedures and Incremental Reduction PN* further stated that this description should include (but is not limited to):

- The operations that were repacked to satisfy the Phase II deadline;
- The number of new satellites, if any, that the eligible space station operator launched, including the dates of launch, reaching final orbit, and start of operations;
- A description of how services were migrated to the upper portion of the band, including the pre- and post-transition frequencies that each customer occupied and now occupies;
- Any necessary technology upgrades or other solutions, such as video compression or modulation, that the eligible space station operator implemented, described on a per antenna and/or feed basis, as appropriate;
- The number and location of antennas and feeds that were transitioned to satisfy the Phase II deadline in the same format as the Relocation Coordinator's final list of Phase II incumbent earth station claims and assignments. This information should be provided in the specified format and also include the actions taken (*e.g.*, retuning and repointing, self-installations by the incumbent earth station operator) for each;
- The date of completion of the above items (with the exception of self-installations by incumbent earth station operators);
- A description of the steps that the eligible space station operator has taken to identify all associated earth stations, antennas, and feeds, and to ensure that they all are transitioned as of the date of Certification, including where the incumbent earth station operator has elected to perform a self-installation;
- Any variances from the eligible space station operator's Transition Plan, such as antennas and feeds involving circumstances beyond the control of the eligible space station operator and therefore subject to a transition delay notice,[17] and antennas and feeds that are otherwise pending removal from the *March 2023 Incumbent Earth Station List PN* list which must be identified as provisional claims,[18] or antennas and feeds subject to a written agreement regarding the transition

[15] *See Wireless Telecommunications Bureau Announces Procedures for Filing of C-band Phase II Certifications of Accelerated Relocation and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments*, GN Docket Nos. 18-122 and 23-97, Public Notice, DA 23-408 (WTB May 15, 2023) (*Phase II Certification Procedures and Incremental Reduction PN*). The *Phase II Certification Procedures and Incremental Reduction PN* stated that: "Challenges to a Certification must be filed in GN Docket No. 23-97 within ten (10) days after the Certification is published in ECFS and the eligible space station operators' replies must be filed in that docket within five (5) days." *Id.* at 10.

[16] *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

[17] *3.7 GHz Report and Order*, 35 FCC Rcd at 2455, para. 294; 47 CFR § 27.1412(b)(3)(i); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[18] *See International Bureau Releases Updated List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, IB Docket No. 20-205; GN Docket No. 20-305, Public Notice, DA 23-176 (IB Mar. 3, 2023) (*March 2023 Incumbent Earth Station List Public Notice*); *International Bureau Identifies Earth Station Antennas on C-Band Incumbent List that May be Inactive or Otherwise Not Operational on the 3.7 GHz Band*, IB

(continued….)

between the eligible space station operator and the incumbent earth station operator, other than self-installations by incumbent earth station operators.[19]

6. Each eligible space station operator was required to certify that it attests to the truthfulness of the above information included in its Certification and is making the Certification in good faith.[20]

7. Embratel submitted its Phase II Certification of Accelerated Relocation on June 1, 2023. The Bureau received no Challenges.

8. Embratel asserts that it has met all the elements required in the *Phase II Certification Procedures and Incremental Reduction PN*.[21] Embratel indicates that it has exited the C-band market in the United States, no longer has any contractual obligations to provide C-band services in the United States, and has ceased all operations from the Star One C1 satellite.[22] Embratel states that the Star One C1 satellite was deorbited and that it surrendered its market access authorization on March 16, 2022.[23]

9. In its Certification, Embratel addresses each of the eight criteria set forth in the *Phase II Certification Procedures and Incremental Reduction PN.* Specifically, as a result of its discontinuation of C-band services, Embratel states that none of its satellite operations required repacking to satisfy the Phase II deadline.[24] Embratel further claims that it reached an agreement with SES to provide adequate capacity to transition the C-band services it was contractually obligated to provide via its Star One C1 satellite.[25] Embratel indicates that its sole C-band satellite serving the United States has ceased operations and was deorbited, and it did not need to launch any new satellites to meet its Phase II obligations.[26] Further, Embratel contends that none of its services required migration to the upper portion of the

(Continued from previous page)
Docket No. 20-205, Public Notice, DA 23-237 (IB Mar. 21, 2023); *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[19] Such written agreements may, for example, reflect that the earth station operator, whose station is associated with the eligible space station operator and included on its Transition Plan, has relieved said eligible space station operator of any obligation to effectuate the transition (in whole or in part, as per the agreement) of the subject earth station. *Phase II Certification Procedures and Incremental Reduction PN* at 6-7, 9.

[20] *3.7 GHz Report and Order*, 35 FCC Rcd at 2457, para. 298; *Phase II Certification Procedures and Incremental Reduction PN* at 9-10. The Bureau will determine that a Certification has been made in bad faith if, for example, the certifying party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. *In Re Amend. of Section 1.17 of Commission's Rules Concerning Truthful Statements to Comm'n*, 18 FCC Rcd 4016, 4021, para. 12 (2003). In cases where it is found that the ARP was disbursed based on a Certification that the eligible space station operator had filed in bad faith, the operator may be subject to the additional consequence of having to return some or all of the ARP, depending on the circumstances. *See* 47 CFR § 27.1412(a). Certifications are subject to section 1.17 of the Commission's rules. 47 CFR § 1.17.

[21] *Phase II Certification Procedures and Incremental Reduction PN* at 8-9.

[22] Embratel Phase II Certification at 2-3.

[23] *Id*. at 3.

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

[25] *Id*. Embratel indicates it has agreed with SES to provide C-band downlink transmissions using available capacity on its SES-4 satellite. *Id*. at 4.

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

C-band,[27] and it did not need to implement any technology upgrades, video compression, or modulation to complete its Phase II transition.[28]

10. Embratel also states that no antennas or feeds required transitioning to satisfy the Phase II deadline.[29] Embratel notes that it initially expected that it would need to transition one antenna, but explains that it could not reach this customer despite its outreach efforts and the relevant earth station license lapsed on December 2, 2020.[30] Embratel asserts that it made a final, albeit unsuccessful, attempt to reach the unresponsive customer on September 24, 2021, and has not since received any communications from the customer.[31] In terms of broader transition outreach, Embratel details the various steps it undertook to identify all associated earth stations, antennas, and feeds.[32] Apart from the one earth station that Embratel indicates was unresponsive, Embratel's Phase II Certification identifies no other variances from its Transition Plan.[33]

11. Based on the record and the absence of credible challenges, and as discussed in the *Phase II Certification Procedures and Incremental Reduction PN*, the Phase II Certification of Accelerated Relocation filed by Embratel on June 1, 2023 is hereby validated,[34] with the following condition: if after the disbursement of the ARP, the Bureau subsequently finds that Embratel should have transitioned additional earth stations, antennas, or feeds regardless of whether or not they were accounted for in its Transition Plan and Phase II Certification, Embratel will be required to complete all Phase II transition work relating to such earth stations, antennas, or feeds in a prompt and effective manner to ensure that the earth stations, antennas or feeds continue to receive substantially the same service that they were able to receive before the transition.[35]

12. ACCORDINGLY, IT IS ORDERED, that, pursuant to sections 1, 4(i), 4(j), 5, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 303(r), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131,

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[27] *Id*. at 4-5.

[28] *Id*. at 5.

[29] *Id*.

[30] *Id*. at 4. Embratel specifies that the referenced earth station customer is Gulfstream Park Racing Association, Call Sign E050364; File No. SES-REG-20051202-01676. *Id.*

[31] *Id*. at 6. Embratel also notes that it previously filed a transition delay notice pursuant to 47 CFR 27.1412(b)(3)(i). *Id*. at 3; *see* Letter from Matthew R. Friedman, Counsel to Embratel TVSAT Telecomunicações S.A., to Joel Taubenblatt, Acting Bureau Chief, Wireless Telecommunications Bureau, FCC, GN Docket No. 21-320, at 2-4 (Sep. 29, 2021).

[32] Embratel Phase II Certification at 7.

[33] *Id*. at 8-9. As noted below, if after the disbursement of the ARP, the Bureau subsequently finds that Embratel should have transitioned this earth station, Embratel will be required to complete all transition work relating to this earth station.

[34] Although the Bureau validates Embratel's Certification in the absence of Challenges or other contrary evidence, we make no specific findings as to its Phase II transition performance.

[35] *Phase II Certification Procedures and Incremental Reduction PN* at 7-8, 10; *see* 47 CFR § 27.1412(a) ("Eligible space station operators are responsible for all necessary actions . . . to migrate the existing services of incumbent earth stations in CONUS to the 4000-4200 MHz band (unless the incumbent earth station opts out of the formal relocation process, per paragraph (e) of this section), as of December 5, 2025. Eligible space station operators that fail to do so will be in violation of the conditions of their license authorization and potentially subject to forfeitures and other sanctions"). The obligation to remediate is independent from, and without prejudice to, any determination that the Certification (or any subsequent remediation effort) was made in bad faith. *Phase II Certification Procedures and Incremental Reduction PN* at 10.

0.331, this Order IS HEREBY ADOPTED, and the above-captioned Phase II Certification of Accelerated Relocation is HEREBY VALIDATED.

13. IT IS FURTHER ORDERED that the Relocation Payment Clearinghouse shall promptly notify the 3.7 GHz Service Licensees that the Bureau has validated the above-captioned Phase II Certification of Accelerated Relocation.

14. IT IS FURTHER ORDERED that the 3.7 GHz Service Licensees shall pay their portion of the relevant Phase II Accelerated Relocation Payment to the Clearinghouse within sixty days of receiving notice from the Clearinghouse, and the Clearinghouse shall disburse the relevant Phase II Accelerated Relocation Payment as set forth in the *3.7 GHz Report and Order* within seven days of receiving the payment from the 3.7 GHz Service Licensees.

15. IT IS FURTHER ORDERED that Embratel must complete all Phase II transition work for any earth stations, antennas, or feeds later determined to be associated with Embratel, regardless of whether they were accounted for in its Transition Plan and Phase II Certification, in a prompt and effective manner.

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331, and the *3.7 GHz Report and Order*, and is effective on release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

PUBLIC NOTICE

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

News media information 202-418-0500
Internet: http://www.fcc.gov (or ftp.fcc.gov)
TTY (202) 418-2555

DA No. 23-570

Report No. SAT-01737 **Friday June 30, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-LOA-20230307-00048 E S3162 Capella Space Corp.
Launch and Operating Authority
Grant of Authority Effective Date: 06/23/2023

Nature of Service: Earth Exploration Satellite Service

On June 23, 2023, the Satellite Programs and Policy Division granted, with conditions, authority to Capella Space Corp. to deploy and operate two low-Earth orbit, non-geostationary satellites, Acadia-1 and Acadia-2, that would operate in the earth-exploration satellite service, conducting synthetic aperture radar (SAR) imaging. Capella Space is authorized to operate in the following frequency bands: 9300-10000 MHz for SAR imaging; 8025-8400 MHz (space-to-Earth) for the EESS payload downlink; 2025-2110 MHz (Earth-to-space) for a TT&C uplink; 8025-8400 MHz (space-to-Earth) for a TT&C downlink; and 1525.0-1559.0 MHz transmitting (space-to-space) and 1626.5-1660.0 MHz receiving (space-to-space) for inter-satellite links with the Inmarsat system, including all the satellites on the Commission's "ISAT" list. Specifically, Capella Space is authorized to operate using a center frequency of 9650 MHz and a bandwidth of 700 MHz for SAR imaging, a center frequency of 8212.5 MHz and bandwidth of 337.5 MHz for its payload downlink, a center frequency of 2036 MHz and bandwidth of 1.4 MHz for its TT&C uplink, and a center frequency of 8027 MHz and bandwidth of 1.4 MHz for its TT&C downlink. In addition, the Acadia-1 and Acadia-2 satellites are authorized to receive a signal from a single earth station in the 9400-9900 MHz band (Earth-to-space) for a limited period following deployment in order to radiometrically calibrate radar measurements. The application was processed in accordance with the small satellite procedures in section 25.122 of the Commission's rules, 47 CFR § 25.122.

SAT-STA-20230313-00054 E S2382 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/29/2023

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-20230428-00097 E S2253 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 06/29/2023

On June 29, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority for an additional period of 180 days, to Intelsat License LLC to continue to operate Galaxy 11 with a new coverage area in the 10.95-11.2 GHz and 11.7-12.2 GHz (space-to-Earth), and 13.75-14.5 GHz (Earth-to-space) frequency bands at the 93.1° W.L. orbital location.

SAT-STA-20230509-00108 E S2382 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 06/29/2023

On June 29, 2023, the Satellite Policy and Programs Division granted, with conditions, the request of Intelsat License LLC for special temporary authority for an additional period of 60 days, to operate Intelsat 10 at the 177.8° E.L. orbital location. The Intelsat 10 space station operates in the 3700-4200 MHz, 11.45-11.7 GHz, 12.25-12.75 GHz (space-to-Earth); and 5925-6425 MHz and 14.0-14.5 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 10 using the following center frequencies: 11699.0 MHz, 12747.5 MHz, 12748.5 MHz, and 12749.5 MHz (space-to-Earth); and 14000.5 MHz and 14499.5 MHz (Earth-to-space).

SAT-STA-20230621-00145 E Intelsat License LLC

Special Temporary Authority

Withdrawn Effective Date: 06/28/2023

INFORMATIVE

SAT-AMD-20230421-00093 S2179 EchoStar Satellite Services L.L.C.

EchoStar Satellite Services LLC, Inc., has notified the Commission of relocation of the EchoStar IX space station from the 121° W.L. orbital location to the 120.9° W.L. orbital location, where it will operate within the technical parameters currently licensed and coordinated for operations at the 121° W.L. orbital location, and in compliance with all of the conditions currently imposed on the operation of EchoStar IX. EchoStar filed its notification pursuant to section 25.118(e) of the Commission's rules and included the certifications set forth under that section.

SAT-LOA-20230404-00070 S3165 ICEYE US, Inc.

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective June 30, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

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

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

In the Matter of	)	
	)	
Petition of TeleGuam Holdings, LLC for Waiver and Certain Other Relief	)	
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Schools and Libraries Universal Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Universal Service Support Mechanism	)	WC Docket No. 02-60
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
	)	

ORDER

Adopted: June 30, 2023 **Released: June 30, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address an emergency petition filed by TeleGuam Holdings, LLC d/b/a GTA (TeleGuam) by waiving several Commission rules and deadlines to assist participants and providers located in the areas impacted by Typhoon Mawar, which made landfall on Guam on May 24, 2023.[1] In order to ensure telecommunications consumers can retain their services after the storm, we also waive, on our own motion, certain rules and deadlines for all participants and service providers in Guam and the Northern Mariana Islands. Because of these compelling and unique circumstances, we find good cause to waive certain rules and deadlines to assist participants, service providers, and Universal Service Fund (USF) contributors in the affected areas.[2]

[1] *See* Petition for Waiver by TeleGuam Holdings, LLC, WC Dockets No. 10-90, 11-42, and 21-450 (filed June 20, 2023) (*TeleGuam Emergency Petition*).

[2] *See Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health care Universal Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable*

(continued….)

II. BACKGROUND

2. On Wednesday, May 24, 2023, Typhoon Mawar struck the Territories of Guam and the Northern Mariana Islands, toppling power lines, damaging and destroying homes, buildings, and infrastructure, and causing widespread power outages that could last for months.[3] Roughly half the Territory of Guam's residents are without power and water approximately three weeks after the typhoon with hundreds being displaced from their homes.[4] In its initial assessment, the government says the Territory of Guam's commercial sector suffered $112 million in damage.[5] The Northern Mariana Islands experienced damage to critical infrastructure such as electricity and water due to the typhoon, with the island of Rota briefly losing all electrical power.[6] Rota was struck by the storm as it moved northwest from Guam.[7] The President has approved major disaster declarations for the Territory of Guam and the Commonwealth of the Northern Mariana Islands allowing authorities to provide disaster relief.[8]

3. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain Universal Service Fund (USF) Program deadlines for areas affected by natural disasters.[9] For the

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Connectivity Program; Connect America Fund, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-1063 (WCB Oct. 4, 2022) *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd 7456 (2017) (waiving certain E-Rate, RHC, Lifeline, and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (adopting temporary rules to provide rural and non-rural public and nonprofit health care providers in areas devastated by Hurricane Katrina, and in areas where evacuees are located, with assistance in order to help in the recovery efforts); *Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 95-116, 99-200, DA 22-284 (WCB Sept. 20, 2022) (temporarily waiving the Commission's telephone number "aging" rule and encouraging service providers to port telephone numbers geographically outside a rate center, to the extent it is technically feasible); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[3] *See* Residents of Guam Still Recovering after Typhoon, Federal News Network (June 12, 2023), https://federalnewsnetwork.com/defense-main/2023/06/residents-of-guam-still-recovering-after-typhoon/.

[4] *Id.*

[5] *See* Guam is Still Recovering from Typhoon Mawar, But Residents are Taking it in Stride, NPR (June 8, 2023), https://www.npr.org/2023/06/08/1181011333/guam-is-still-recovering-from-typhoon-mawar-but-residents-are-taking-it-in-strid.

[6] Guam Breathes Sigh of Relief as Island Weathers Super Typhoon Mawar Without Single Death, The Independent (May 26, 2023), https://www.independent.co.uk/climate-change/news/guam-typhoon-mawar-update-b2346339.html.

[7] *See* Rota Recovery Efforts in Full Swing, Saipan Tribune (May 29, 2023), https://www.saipantribune.com/index.php/rota-recovery-efforts-in-full-swing/.

[8] *See* The White House, President Joseph R. Biden, Jr. Approves Guam Disaster Declaration (May 25, 2023), https://www.whitehouse.gov/briefing-room/presidential-actions/2023/05/25/president-joseph-r-biden-jr-approves-guam-disaster-declaration/; The White House, President Joseph R. Biden, Jr. Approves Commonwealth of the Northern Mariana Islands Disaster Declaration (June 2, 2023), https://www.whitehouse.gov/briefing-room/presidential-actions/2023/06/02/president-joseph-r-biden-jr-approves-commonwealth-of-the-northern-mariana-islands-disaster-declaration/. *See also FEMA*, President Joseph R. Biden, Jr. Amends Guam's Major Disaster Declaration Authorizing Additional Federal Assistance to Help Individuals and Families Jumpstart Recovery Following Typhoon Mawar (May 29, 2023).

[9] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization; Connect America Fund; Federal-State Joint Board on Universal Service High-Cost Universal Service Support; Establishing Emergency Connectivity Fund to Close the*
(continued….)

purposes of the waivers we grant today, we define "Affected Disaster Areas" as the areas in the Territory of Guam and the Commonwealth of the Northern Mariana Islands that the Federal Emergency Management Agency (FEMA) has designated as eligible for Individual or Public Assistance for the purposes of federal disaster relief as of the date of release of this Order.[10]

III. DISCUSSION

4. In response to the damage caused by Typhoon Mawar, we waive various provisions of the Lifeline, Affordable Connectivity Program (ACP), E-Rate, Rural Health Care (RHC) Program, and High Cost rules for those Federal Communications Commission (FCC or Commission) programs' participants and for USF contributors located in Guam and the Northern Mariana Islands,[11] as well as the Commission's telephone number "aging" rule for all telecommunications service and interconnected voice over Internet Protocol (VoIP) providers serving Guam and the Northern Mariana Islands. Generally, the Commission's rules may be waived for good cause shown.[12] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[13] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[14]

A. Lifeline

5. We, on our own motion, waive the Lifeline non-usage, recertification, and reverification requirements for subscribers residing in Guam and the Northern Mariana Islands.[15] We find that good

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Homework Gap; Emergency Broadband Benefits Program, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, Order, 36 FCC Rcd 13405 (WCB 2021) (*Hurricane Ida Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, Order, 32 FCC Rcd 7456, 7457, para. 2 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Support Mechanism*, WC Docket No. 02-6, Order, 34 FCC Rcd56, 57, para. 2 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission's Rules by Florida Department of Management Services; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd10186, 10188, para. 5 (WCB 2018) (Florida Hurricanes Order); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9540, para. 4 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16885, para. 4 (2005) (*Hurricane Katrina Order*) ; *Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 95-116, 99-200, DA 22-284 (WCB Sept. 20, 2022).

[10] *See FEMA*, https://www.fema.gov/disaster/current/typhoon-mawar (last visited June 26, 2023).

[11] We recognize that entities in the Affected Disaster Areas may need additional relief relating to E-Rate, RHC, Lifeline, High Cost, Contributions, and ACP obligations not addressed in this Order as they complete assessments of the damage to their networks; such entities should request specific relief to address these individualized circumstances from the Bureau.

[12] 47 CFR § 1.3.

[13] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1159.

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

[15] We note that TeleGuam requests a 90-day extension of the Lifeline recertification requirements for its subscribers. *TeleGuam Emergency Petition* at 10-11. However, we do not believe that the situation calls for such a lengthy extension to what is already a 60-day process for consumers, and we believe that any extension should be applicable to all subscribers located in Guam and the Northern Mariana Islands. As such, we believe a further 60 days is appropriate. We also note that the items in TeleGuam's petition not acted on today remain pending. *See TeleGuam Emergency Petition* at 7-8, 10-11 (requesting modifications to the programs that qualify consumers for Lifeline, the (continued….)

cause exists to waive sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in Guam and the Northern Mariana Islands through August 31, 2023.[16] Given the damage caused by Typhoon Mawar to infrastructure in the Affected Disaster Areas, strict compliance with these rules may be impracticable and may risk harm to Lifeline subscribers who may be inappropriately de-enrolled during the recovery efforts.[17]

6. To promote the maintenance and rebuilding of communities affected by Typhoon Mawar and to facilitate continued access to telecommunications services for disaster victims, we find it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules.[18] Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service for 30 consecutive days.[19] Waiving these rules will help low-income consumers retain access to emergency communications services during this natural disaster, and allows ETCs to continue providing Lifeline service to disaster victims in the Affected

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options for support, the overall support amount, and the time periods in which service providers need to file claims for reimbursement from the Lifeline program).

[16] *See* 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f).

[17] *See Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology,* CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd. 7456 (2017) (waiving certain E-rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap*, *COVID-19 Telehealth Program*, *Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, Order, DA-22-998 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap*, *COVID-19 Telehealth Program*, *Affordable Connectivity Program*, *Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, Order, DA-22-1063 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

[18] 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

[19] *See id.*

Disaster Areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to work through the damage of Typhoon Mawar.[20]

7. We also find that good cause exists to waive sections 54.405(e)(4) and 54.410(f) of the Commission's rules, which require Lifeline subscribers to demonstrate continued eligibility for the program, through August 31, 2023.[21] This waiver will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Verifier during the waiver period.[22] Waiver of these rules will allow the Universal Service Administrative Company (USAC) and ETCs serving Lifeline subscribers in Guam and the Northern Mariana Islands additional time to complete the recertification process. Disruptions to telephone and Internet service resulting from the typhoon could make it difficult, if not impossible, for Lifeline subscribers to receive and respond to recertification requests and reminders. At the expiration of the waiver period, recertification efforts will resume and subscribers who were subject to the waiver will have an additional 60 days to respond to recertification notices.

8. Where USAC has already conducted recertification outreach, we direct USAC to not conduct de-enrollments for any subscriber who would have been de-enrolled, and was not actually de-enrolled, after June 30, 2023. USAC should send new outreach to these subscribers at the end of this waiver period, as is practicable, and give such subscribers an additional 60 days to complete their recertification activity. Any subscriber who has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules.

9. USAC also conducts a one-time reverification of eligibility for each existing Lifeline subscriber to confirm that all existing Lifeline subscribers meet the National Verifier's eligibility standards. We direct USAC not to de-enroll any Lifeline subscriber residing in Guam or the Northern Mariana Islands for failure to successfully respond to a pending reverification request with documentation deadlines that will occur before August 31, 2023. We also direct USAC not to open any new reverification requests requiring documentation for Lifeline subscribers or ETCs in Guam or the Northern Mariana Islands until after August 31, 2023 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

10. ETCs in Affected Disaster Areas that are unable to comply with the Lifeline non-usage, recertification, and reverification requirements at the end of this waiver period may request additional, narrowly tailored relief from these requirements from the Bureau. Additionally, if the typhoon has significantly impacted an ETC's ability to complete an ongoing Lifeline audit, the Bureau will consider requests for extension of any relevant deadlines on a case-by-case basis.

B. Affordable Connectivity Program

11. In order to promote continued access to broadband service for Affordable Connectivity Program (ACP) households in Guam and the Northern Mariana Islands that are affected by Typhoon Mawar, we find that it is in the public interest to temporarily waive through August 31, 2023, for ACP households in the Affected Disaster Areas, sections 54.1808(c)(1) and (2) and 54.1809(c) of the

[20] As noted above, the waiver period is through August 31, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on September 1, 2023) to use their Lifeline-supported service. If the subscriber does not use their Lifeline-supported service during that 30-day timeframe, they will enter their 15-day cure period on October 1, 2023.

[21] 47 CFR §§ 54.405(e)(4), 54.410(f).

[22] *See* 47 CFR § 54.405(e)(4) (requiring 60 days' notice to subscribers to respond to recertification efforts prior to de-enrollment).

Commission's rules[23] concerning the non-usage requirement and de-enrollment for non-usage, and sections 54.1806(f)(1) and (5) and 54.1809(d) of the ACP rules concerning the annual recertification and de-enrollment for failure to recertify.[24] Strict compliance with these rules may be impracticable and may risk harm to ACP subscribers who may be de-enrolled during the rebuilding and recovery efforts.[25]

12. Under the ACP rules in sections 54.1808(c)(1) and (2) and 54.1809(c), participating providers offering an ACP service for which the household does not pay a monthly fee are required to certify that every such household has used its supported service at least once every consecutive 30 days, as usage is defined in section 54.407(c)(2) of the Commission's rules, in order to claim ACP reimbursement for discounted ACP service for a specific subscriber in a given service month.[26] Providers

[23] 47 CFR §§ 54.1808(c)(1), (2), and 54.1809(c). We make clear that the temporary waiver of these rules does not waive the language in section 54.1808(c)(2) that allows providers to seek reimbursement only after the subscriber activates their ACP service.

[24] 47 CFR §§ 54.1806(f)(1), (5), 54.1809(d). As with Lifeline, we note that TeleGuam requests a 90-day extension of the ACP recertification timeline for its subscribers. *TeleGuam Emergency Petition* at 10-11. For ACP as well, we do not believe that the situation calls for such a lengthy extension to what is already a 60-day process for consumers. As such, we believe a further 60 days is appropriate. Additionally, we believe that any such support should be available to all ACP subscribers in Guam and the Northern Mariana Islands. Also as with Lifeline, we note that the items in TeleGuam's petition not acted on today remain pending. *See TeleGuam Emergency Petition* at 7-8, 10-11 (requesting modifications to the programs that qualify consumers for ACP, the options for support, and the time periods in which service providers need to file claims for reimbursement from the ACP).

[25] *See Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology,* CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd. 7456 (2017) (waiving certain E-rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap*, *COVID-19 Telehealth Program*, *Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, Order, DA-22-998, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap*, *COVID-19 Telehealth Program*, *Affordable Connectivity Program*, *Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, Order, DA-22-1063, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

[26] 47 CFR § 54.1808(c)(1) and (2).

cannot claim support for, and must de-enroll, subscribers who do not cure their non-usage during the 15-day cure period.[27] We recognize that power and service outages caused by Typhoon Mawar may interfere with a household's ability to use their ACP-supported service, perhaps for an extended period of time. Allowing participating providers in Guam and the Northern Mariana Islands to maintain service for these ACP households as they experience the aftermath of the typhoon, and claim reimbursement for the service provided to them, helps to ensure that these households are not de-enrolled from the program during the limited waiver period when it may be impossible for them to use their ACP-supported service. It will also ensure that subscribers who lose service due to Typhoon Mawar will be able to regain access to their ACP-supported service when it again becomes available to them. After the expiration of the waiver period, ACP subscribers who are subject to the non-usage rule will have 30 days to use their ACP service for the purposes of sections 54.1808(c)(1) and (2) of the Commission's rules, and 15 days to cure any non-usage.[28] ACP providers in Guam and the Northern Mariana Islands that are unable to comply with the ACP non-usage and related de-enrollment requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Bureau.

13. We find it is also in the public interest to temporarily waive sections 54.1806(f)(1) and (5), and 54.1809(d), of the Commission's rules for ACP subscribers in Guam and the Northern Mariana Islands who would have been required to respond to recertification outreach during the waiver period.[29] Waiver of these rules will allow USAC and providers serving ACP subscribers in the Affected Disaster Areas additional time to complete the annual recertification process. Disruptions to electricity and communication services resulting from the typhoon could make it difficult, if not impossible, for ACP subscribers in Guam and the Northern Mariana Islands to receive and respond to recertification requests and reminders during the waiver period. After the waiver period ends on August 31, 2023, pursuant to section 54.1809(d) of the ACP rules, ACP-only households will have 60 days to respond to recertification outreach by USAC or their service provider as applicable.[30] Where USAC or the participating provider has already conducted recertification outreach to an ACP subscriber in Guam and the Northern Mariana Islands, after the end of the waiver period, new outreach should be sent to these subscribers within 14 days of the waiver period ending on August 31, 2023, and such subscribers should have an additional 60 days to complete their recertification activity.[31]

14. Under the ACP rules, qualifying households that are enrolled in both the ACP and Lifeline may rely on a successful Lifeline recertification to satisfy the annual ACP recertification

[27] 47 CFR § 54.1808(c)(1) and (2) and 54.1809(c).

[28] As noted above, the waiver period is through August 31, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on September 1, 2023) to use their Lifeline-supported service. If the subscriber does not use their Lifeline-supported service during that 30-day timeframe, they will enter their 15-day cure period on October 1, 2023.

[29] During the waiver period, USAC may continue to check the continued eligibility of ACP households in Guam and the Northern Mariana Islands using the database connections through the National Verifier to the extent that access to those databases has not been impacted by the typhoon. For these automated database checks, USAC is able to verify the continued eligibility of households enrolled in the ACP without any action on the part of the subscriber. During the waiver period, participating providers that are required to recertify their ACP subscribers under the ACP rules may similarly use any permitted eligibility confirmation mechanisms or methods that do not require affirmative action on the part of the subscribers. During the temporary waiver period, participating providers and USAC should otherwise cease any recertification measures that require affirmative action from ACP-households. USAC and participating providers may resume such recertification measures steps after the end of the waiver period.

[30] 47 CFR § 54.1809(d).

[31] For the ACP, unlike Lifeline, in certain circumstances participating providers and not USAC are responsible for conducting the required ACP annual recertification. *See* 47 CFR § 54.1806(f)(1) (outlining when USAC and when service providers, respectively, conduct ACP recertifications).

requirement.[32] Households that are enrolled in both programs who do not pass Lifeline recertification still have an opportunity to demonstrate that they qualify for the ACP, if required, after completion of the Lifeline recertification process.[33] Households that are enrolled in both Lifeline and the ACP, and that do not pass their Lifeline recertification for calendar year 2023, will be afforded time to demonstrate their continued eligibility for the ACP even if this extends into 2024.[34] We expect USAC and participating providers to start the recertification process for such subscribers in Guam and the Northern Mariana Islands within 14 days of the waiver period ending on August 31, 2023. To the extent that an ACP subscriber (whether enrolled in the ACP only or in both the ACP and Lifeline) successfully completes their recertification process in 2024, they would not be required to undergo ACP recertification again in 2024.

C. E-Rate Program[35]

15. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following E-Rate Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 486, 472, and 474; (3) the June 30, 2023 service implementation deadline for special construction services; (4) portions of the service and equipment substitution rule; and (5) document retention and production requirements for participating E-Rate applicants and service providers whose documents were destroyed by Typhoon Mawar.

16. *E-Rate Program Deadlines.* For schools and libraries located in the Affected Disaster Areas, we waive, on an emergency interim basis, the following deadlines that may occur after the effective date of this Order,[36] and provide those affected with up to 150 calendar days from the effective date of this Order to submit the required filing:[37]

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.[38]
- Filing FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form).[39]

[32] 47 CFR § 54.1806(f)(1).

[33] As explained in the *Affordable Connectivity Program Order*, there are a few differences in the eligibility criteria between the Lifeline Program and the ACP. *See Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, 37 FCC Rcd 484, 527, para. 86, & n. 248 (2022) (*Affordable Connectivity Program Order*). Accordingly, if a household enrolled in both programs does not pass Lifeline recertification, this would not automatically render that household ineligible for the ACP. *See id.*

[34] *See Affordable Connectivity Program Order*, 37 FCC Rcd at 527, para. 86 ("Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program."); 47 CFR § 54.1809(d) (giving ACP subscribers a 60-day deadline to respond to recertification efforts).

[35] The E-Rate program is formally known as the schools and libraries universal service support mechanism.

[36] E-Rate program participants located in the Affected Disaster Areas who may have already missed these deadlines due to damage or disruption caused by Typhoon Mawar may submit the required filings up to 150 calendar days from the release date of this Order.

[37] We note that USAC has already suspended many of its administrative deadlines for applicants in the Affected Disaster Areas pursuant to its natural disaster procedures.

[38] 47 CFR §§ 1.106, 54.720. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

[39] Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; *see also Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice Form).[40]

17. *Service Implementation Deadline Extensions*. Additionally, we find that good cause exists to waive the service implementation deadline for special construction services, subject to the limitations herein, for applicants located in the Affected Disaster Areas that have a deadline of June 30, 2023. We find that the extensive damage to property, facilities, and resources resulting from Typhoon Mawar will make it impossible for some applicants in the Affected Disaster Areas to complete special construction and light the new fiber by this date, and that service installation and construction efforts may continue to be delayed or impaired as communities in the Affected Disaster Areas work to recover and rebuild. Accordingly, we extend this deadline to June 30, 2024, subject to the applicant filing a valid FCC Form 500 certifying that construction for the special construction project was unavoidably delayed due to damage caused by Typhoon Mawar.[41] Although we do not otherwise extend the service delivery deadline for other non-recurring services, to the extent individual applicants may have been impacted by Typhoon Mawar and are consequently not able to meet this deadline, we note that such applicants may seek a waiver of the extension of the service implementation deadline for non-recurring services and make the required showing under the Commission's rules for such relief.[42]

[40] 47 CFR § 54.514(a). Given the significant damage inflicted by Typhoon Mawar, consistent with precedent we find that extraordinary circumstances exist warranting a waiver of the invoice filing deadline. *See Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Universal Service Contribution Methodology,* CC Docket No. 02-6, WC Docket No. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd 7456, 7458, n.13 (WCB 2017) (*Hurricanes Harvey, Irma and Maria Order*) (waiving E-Rate invoice deadline for areas impacted by Hurricanes Harvey, Irma, and Maria); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Connect America Fund; High-Cost Universal Service Support Mechanism; Establishing Emergency Connectivity Fund to Close the Homework Gap; Emergency Broadband Benefit Program*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42 10-90, 05-337, 21-93, and 20-445, Order, 36 FCC Rcd 13405, 13407-08, at para. 5 (WCB 2021) (*Hurricane Ida Order*) (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program*, CC Docket No. 02-6; WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, Order, DA 22-998, 2022 WL 4483167, at *4, para. 5 (rel. Sept. 22, 2022) (*Hurricane Fiona Order*) (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program; Connect America Fund*, CC Docket No. 02-6; WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, 10-90, Order, DA 22-1063, 2022 WL 6351643 (rel. Oct. 4, 2022) (*Hurricane Ian Order*) (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ian); *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 at 8965-66, paras. 238-40 (2014).

[41] *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014) (*Second 2014 E-Rate Order*). The applicant may file the FCC Form 500 any time before June 30, 2023.

[42] An applicant may request an extension of the service implementation deadline for non-recurring services from USAC if, for example, the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control. 47 CFR § 54.507(d)(4)(iii); *see, e.g., Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16904, para. 40, n.110 (2005) (*Hurricane Katrina Order*) (stating that a program applicant may request an extension of the implementation deadline for funding requests when the applicant's service provider is unable to complete implementation for "reasons beyond the service provider's control" such as Hurricane Katrina); *see also Request for*

(continued….)

18. *Service and Equipment Substitutions*. Consistent with precedent,[43] we will also provide increased flexibility for service and equipment substitutions in the Affected Disaster Areas.[44] Section 54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;[45] (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.[46] For applicants located in the Affected Disaster Areas that need to replace services or product(s) that have been disrupted, destroyed, or rendered unusable by Typhoon Mawar, we waive this rule to exclude the requirement that the substituted service or product(s) must have the same functionality as the service or product that it is replacing.[47] This will allow applicants in the Affected Disaster Areas maximum flexibility to substitute services and product(s) based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),[48] so that they may use already approved E-Rate funding to replace damaged or destroyed

(Continued from previous page)
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, 13652-53, para. 2 (WCB 2014) (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).

[43] *See, e.g.*, *Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9543-44, para. 10 (providing increased flexibility for E-Rate program service substitutions in the wake of Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13409, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ian).

[44] However, we deny the Petitioner's request for an extension to request site and service substitutions, as well as their request for an extension of the funding application filing window. Instead, we believe the increased flexibility allowed by waiving section 54.504(d)(1)(i) of the Commission's rules will allow applicants to request and receive the equipment and services that are now needed in light of the damage caused by Typhoon Mawar.

[45] The Commission previously determined that an equipment or service substitution request does not have the same functionality if it "changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service)." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

[46] 47 CFR § 54.504(d)(1)(iv).

[47] 47 CFR § 54.504(d)(1)(i). We remind applicants that they may only request service and equipment substitutions if the implementation deadline for the service or product to be replaced has not passed. *See, e.g.*, 47 CFR § 54.507(d)(1), (d)(4); *see also Second 2014 E-Rate Order,* 29 FCC Rcd at 15550, 15558, paras. 37, 49.

[48] In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission's rules permit applicants to do so when: (a) it is allowed under an applicant's state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. *See Schools and Libraries Universal Service Support Mechanism, et al.,* CC Docket Nos. 02-6, et al., Sixth Report and Order, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45 and 97-21, 15 (continued….)

products(s) and restore services, subject to the limitations stated herein.[49] We believe this additional flexibility will allow applicants, given their specific understanding of their circumstances, to use E-Rate funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives section 54.504(d)(1)(i) of the Commission's rules while keeping the remaining aspects of our service and equipment substitution rule intact. Applicants must continue to ensure that a service and/or equipment substitution: (a) does not violate any contract provisions;[50] (b) does not violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.[51] Applicants must also request approval of service and/or equipment substitutions by submitting a service and/or equipment substitution request to USAC.

19. *Document Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Typhoon Mawar. We waive section 54.516(a) of our rules with respect to such destroyed records, which requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.[52] Applicants and service providers will not be penalized for failure to retain records destroyed by Typhoon Mawar. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by Typhoon Mawar. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by Typhoon Mawar, including records relating to any relief granted by this Order.

20. We find that the significant property damage, power outages, and disruptions in services caused by Typhoon Mawar in the Affected Disaster Areas constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We find that a 150-day waiver period for the filing deadlines listed above and other relief granted by this Order are appropriate measures to accommodate the extraordinary circumstances caused by Typhoon Mawar, while continuing to protect program integrity. Applicants or service providers in the Affected Disaster Areas that are unable to comply with these program deadlines or procedures at the end of this period may request additional, narrowly tailored relief from these or other requirements from the Bureau.

(Continued from previous page)
FCC Rcd 5498 (2000) (*Copan Order)*, and stating that the new requirements are in addition to those outlined in the *Copan Order*).

[49] Beginning in Funding Year 2021, school districts and library systems are permitted to transfer equipment between schools within a district and libraries within a system without notifying USAC of the transfer. *See* 47 CFR § 54.513(d); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11238-39, para. 49 (2019). However, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission's rules. 47 CFR § 54.513(d).

[50] The additional flexibility provided for applicants located in the Affected Disaster Areas seeking substitutions for services and products damaged by Typhoon Mawar is not intended to invalidate any contracts between applicants and service providers. Applicants are solely responsible for ensuring that requested equipment and service substitutions are permitted under their agreements with service providers.

[51] 47 CFR § 54.504(d). In the event that an equipment or service substitution results in a change in the pre-discount price for the supported equipment or service, support is based on the lower of either the pre-discount price of the equipment or service for which support was originally requested or the pre-discount price of the new, substituted equipment or service. *See* 47 CFR § 54.504(d)(2).

[52] 47 CFR § 54.516(a).

D. Rural Health Care Program

21. For health care providers and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the five-year documentation retention and production rules for participating health care providers and service providers whose documents were destroyed by Typhoon Mawar; (4) the service delivery deadline for non-recurring services; and (5) the invoice filing deadline.

22. *Deadline for Appeals and Requests for Waiver*. We waive and extend the 60-day deadlines in section 54.720(b) of the Commission's rules for requests for review or waiver of decisions by USAC or directed to USAC or the Commission.[53] TeleGuam states that the disruptions caused by Typhoon Mawar will continue to impact health care providers and service providers for an indefinite period of time.[54] We find that waiving the deadlines for health care providers and service providers in the Affected Disaster Areas for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by Typhoon Mawar. Any harm in providing a filing deadline extension is outweighed by the significant public interest benefits derived from giving petitioners, participants, and other service providers additional time to submit their filings. To reduce the burden on affected service providers, we direct USAC to automatically provide affected service providers with an additional 150 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from May 22, 2023 through 150 calendar days from the release of this Order.

23. *Response Time for USAC Information Requests*. We waive the 14-day deadline for applicants in the affected areas to respond to information requests from USAC.[55] TeleGuam states that health care providers in the Affected Disaster Areas have diverted their administrative resources in response to Typhoon Mawar or have been unable to access facilities, which impedes their ability to respond timely to required regulatory deadlines.[56] We therefore find that waiving the 14-day response time for USAC information requests is an appropriate response. This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by RHC Program participants, and will apply to all information requests with a deadline on or after May 22, 2023 regardless of the funding year for which those requests relate. We provide affected health care providers and service providers with up to 150 calendar days from the effective date of this Order to respond to information requests from USAC.

24. *Document Retention and Production*. We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Typhoon Mawar. With respect to such destroyed records, we waive section 54.631(b) of the Commission's RHC Program rules, which requires health care providers and service providers to retain all documents specified by the rule for at least five years after the last day of the delivery of supported services in a given funding year.[57] Program participants will not be penalized for failure to retain records destroyed by the typhoon. Applicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission will be required to certify that the records, and any copies of such records, were destroyed by Typhoon Mawar. We note that the record retention requirements under our rules continue to apply to

[53] 47 CFR § 54.720(a)-(b).

[54] *TeleGuam Emergency Petition*, at 12.

[55] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015).

[56] *TeleGuam Emergency Petition*, at 12.

[57] 47 CFR § 54.631(b).

all records that were not destroyed by the typhoon, including records relating to any relief granted by this Order.

25. *Service Delivery Deadline*. We next waive section 54.626(a) to automatically grant a one-year extension of the service delivery deadline for non-recurring services for all funding year 2022 funding requests from health care providers in the Affected Disaster Areas. Section 54.626(a) provides that, with certain exceptions, RHC Program participants must use all recurring and non-recurring services for which RHC Program funding has been approved by June 30 of the funding year for which the program support was sought.[58] RHC Program participants may request and receive from USAC a one-year extension of the implementation deadline for non-recurring services if it satisfies one of a series of criteria, including cases where a service provider is unable to complete implementation for reasons beyond the service provider's control.[59] As the damage caused by Typhoon Mawar manifestly qualifies as a circumstance beyond the control of service providers, we find that waiving the service delivery deadline is an appropriate response. To reduce the burden on participants, we direct USAC to automatically provide participants until June 30, 2024 to use all non-recurring services for which RHC Program funding has been approved.

26. *Invoice Filing Deadline*. We also waive section 54.627(a) to automatically grant a 120-day extension of the invoice filing deadline for all funding year 2022 funding requests from health care providers in the Affected Disaster Areas. Section 54.627(a) requires that RHC Program participants submit invoices to USAC within 120 days after the later of: (1) the service delivery deadline; or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request.[60] RHC Program participants may request a one-time extension of the invoice filing deadline.[61] If the extension is timely requested, USAC is required to grant a 120-day extension.[62] We find that extending the invoice deadline is an appropriate measure to accommodate the extraordinary circumstances caused by Typhoon Mawar, and that the significant public interest benefits derived from extending the deadline outweigh any possible harm from such relief. To reduce the burden on participants, we direct USAC to automatically provide participants in the Affected Disaster Areas with a 120-day extension to submit their invoices without it being requested.

E. High Cost Program

27. *Temporary Waiver of Annual High-Cost Report Deadline*. We grant, *sua sponte*, a temporary 30-day waiver of the July 3, 2023 deadline for recipients of high-cost support in Guam and the Northern Mariana Islands to file their annual report.[63] Pursuant to section 54.313 of the Commission's rules, eligible telecommunications carriers (ETCs) receiving high cost support must file certain financial and operational information by July 1st on an annual basis (or the next business day if July 1st falls on a

[58] 47 CFR § 54.626(a).

[59] 47 CFR § 54.627(b). The criteria are: (1) applicants whose funding commitment letters are issued by USAC on or after March 1 of the funding year for which discounts are authorized; (2) applicants that receive service provider change authorizations or site and service authorizations from USAC on or after March 1 of the funding year for which discounts are authorized; (3) applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control; and (4) applicants whose service providers are unwilling to complete delivery and installation because the applicant's funding request is under review by USAC for program compliance. *Id*.

[60] 47 CFR § 54.627(a).

[61] 47 CFR § 54.627(b).

[62] *Id.*

[63] *See* 47 CFR § 54.313.

weekend).[64] Here, to alleviate burdens consistent with the rationale in this Order, we extend the deadline to August 2, 2023.[65]

F. Contributions

28. To provide further relief for affected companies, we waive additional rules and requirements for affected contributors to the USF. We find that good cause exists to waive these rules and requirements, subject to the limitations herein, for all contributors serving Guam and the Northern Mariana Islands. The extensive damage to property and facilities by Typhoon Mawar has caused significant disruption to operations in Guam and the Northern Mariana Islands. We find that these circumstances warrant a temporary waiver of the contributions rules and requirements described below. We have taken similar action under extreme circumstances in the past,[66] and find that granting this emergency relief will help to temporarily alleviate burdens on service providers in the Affected Disaster Areas.

29. *Form 499-Q Deadlines and Late Fees.* First, we extend the 45-day revision deadline for FCC Form 499-Q filings made on May 1, 2023 and those that will be made on August 1, 2023 by contributors serving the Affected Disaster Areas. Extending these deadlines will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of Typhoon Mawar on contributor revenues rather than having to wait until next year's FCC Form 499-A true-up process. We direct USAC to accept revisions to these filings until October 1, 2023. For those carriers that seek to revise their May 2023 and August 2023 FCC Form 499-Qs after October 1, 2023, the Bureau will consider requests for an extension of the revision deadline on a case-by case basis.

30. Next, we temporarily waive sections 54.713(b)-(c) of the Commission's rules for providers located in the Affected Disaster Areas.[67] We direct USAC to refrain from assessing late fees on FCC Form 499-Q filings made by these providers after the upcoming August 1 filing deadline until October 1, 2023.[68] We extend this temporary waiver to consultants and third-party preparers that are based in the Affected Disaster Area and whose operations have sustained damage due to Typhoon Mawar, thus preventing them from meeting the August 1, 2023 FCC Form 499-Q deadline. We find that this temporary waiver will prevent these groups whose operations have been substantially impacted by Typhoon Mawar from being unfairly penalized for missing this filing deadline. We additionally direct USAC to refrain from assessing interest and penalties incurred by affected contributors until after October 1, 2023.[69] For those providers that are unable to file the FCC Form 499-Q prior to October 1, 2023, the Bureau will consider requests for an extension of the filing deadline on a case-by case basis.

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[64] *Id*.

[65] We note that TeleGuam Holdings, LLC's petition for waiver seeks relief related to high-cost support that we do not address here. Those requests remain pending. *See TeleGuam Emergency Petition*, at 12-16. We also note when specifically requested, we will consider relief related to Connect America Fund Broadband Loop Support obligations. *Id.* at 14.

[66] *See, e.g., Schools and Libraries Universal Service Support Mechanism, et al.*, Order, 32 FCC Rcd 7456 (2017) (waiving certain E-Rate, Rural Health Care, Lifeline, and contribution rules and deadlines to assist schools, libraries, healthcare providers, Lifeline Program participants, and contributors affected by Hurricanes Harvey, Irma, and Maria).

[67] 47 CFR § 54.713(b)-(c).

[68] 47 CFR § 54.713(c). We direct USAC to utilize Line 109 of the FCC Form 499-A to determine whether a provider's headquarters is located in the Affected Disaster Areas.

[69] 47 CFR § 54.713(b). See also 31 CFR § 901.9(g) (permitting an agency to waive interest, penalties, and administrative costs on debts owed to the United States "if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States").

31. *Form 499-A Filing Deadline Extension.* Finally, TeleGuam seeks a 150-day extension of upcoming FCC Form 499-A and FCC Form 499-Q filing deadlines.[70] Because we have directed USAC to not assess interest or penalties on contributors that file the FCC Form 499-Q late, it is not necessary to provide a 150-day extension of the filing deadline. Additionally, in similar circumstances we have not waived the FCC Form 499-A filing deadline for contributors in affected areas and as such deny the request to extend the filing deadline for the 2024 FCC Form 499-A.

G. Protecting Program Integrity

32. We are committed to protecting the integrity of the Lifeline, Affordable Connectivity, E-Rate, Rural Health Care, and High Cost programs (collectively, FCC programs). Although we grant the limited waivers described herein, program participants, service providers, and USF contributors remain otherwise subject to audits and investigations to determine compliance with FCC program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the FCC programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the FCC programs under our own procedures and in cooperation with law enforcement agencies.

H. Telephone Numbering

33. Section 52.15(f)(1)(ii) limits a telecommunications service or interconnected VoIP provider's ability to "age" residential telephone numbers that have been disconnected for up to 90 days before assigning them to other customers.[71] Waiver of section 52.15(f)(1)(ii) will allow service providers in Guam and the Northern Mariana Islands, upon customers' request, to disconnect temporarily customers' telephone service to avoid billing issues, and then reinstate the customers' same numbers when service is reconnected. This waiver is in effect immediately and for a nine-month period, expiring April 1, 2024.

34. Also, because of substantial damage to telecommunications systems we expect to be caused by Typhoon Mawar to areas within its path, we recognize that customers in the affected areas may wish to port numbers to locations outside their rate centers. To facilitate their customers' continued access to telecommunications service following the typhoon, we encourage service providers to port telephone numbers geographically outside a rate center, to the extent it is technically feasible. We also encourage all service providers in the areas affected by Typhoon Mawar to waive call forwarding, message center, and voicemail service charges for affected customers, to the extent lawfully permitted, until the customers' service is restored.

IV. ORDERING CLAUSES

35. ACCORDINGLY, IT IS ORDERED, pursuant to the authority in sections 1-4, 251(b)(2), 251(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 251(b)(2), 251(e), 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 sections 47 CFR §§ 52.16(f)(1)(ii), 54.405(e)(3)-(4), 54.407(c)(2), 54.410(f), 54.1806(f)(1) and (5), 54.1808(c)(1)-(2), 54.1809(c)-(d), 54.504(d)(1)(i), 54.514(a), 54.516(a), 54.626(a), 54.627(a), 54.631(b), 54.720(b), 54.313, and 54.713(b) and (c) ARE WAIVED to the extent provided herein.

[70] *TeleGuam Emergency Petition*, at 11.

[71] 47 CFR § 52.15(f)(1)(ii).

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

PUBLIC NOTICE

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

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DA 23-572
Released: June 30, 2023

TELEVISION LICENSE EXPIRATIONS

On April 1, 2023, television stations located in Delaware and Pennsylvania were required to file applications for license renewal for terms expiring on August 1, 2023. The following station failed to file a license renewal application and their license will expire as of August 1, 2023, provided no renewal application is received by midnight on the date of expiration:

Call	Community of License	Fac. ID	Licensee
WLEP-LD	Erie, PA	168177	Locuspoint WMKE Licensee, LLC

- FCC -

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Hope Broadcasting, Inc.	)	Facility ID 72057
Licensee of WFGN(AM),	)	FRN: 0009994732
Gaffney, South Carolina		

ORDER TO PAY OR TO SHOW CAUSE

Adopted: June 30, 2023 **Released: June 30, 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 Hope Broadcasting, Inc. (Licensee) for WFGN(AM), Gaffney, South Carolina (Station), for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission). For the reasons set forth below, we direct Licensee to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

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

3. For fiscal year (FY) 2010, the deadline for paying regulatory fees was August 31, 2010;[3] for FY 2012, it was September 13, 2012;[4] for FY 2013, it was September 20, 2013;[5] for FY 2014, it was September 23, 2014;[6] for FY 2015, it was September 24, 2015;[7] for FY 2016, it was September 27, 2016;[8]

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

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

[3] *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees,* Public Notice, DA 10-1450, 25 FCC Rcd 10670 (OMD Aug. 9, 2010).

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

[5] *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees,* Public Notice, DA 13-1796, 28 FCC Rcd 12635 (OMD Sep. 4, 2013).

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

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

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

and for FY 2022, it was September 30, 2022.[9] When Licensee failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act[10] and section 1.1164 of the Rules,[11] and interest, penalties, and administrative costs required by section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA), section 9A(c)(2) of the Act and section 1.1940 of the Rules.[12]

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of $1,309.54 for FY 2010; $1,355.22 for FY 2012; $1,361.69 for FY 2013; $1,314.33 for FY 2014; $1,280.78 for FY 2015; $188.24 for FY 2016; and $1,394.42 for FY 2022. Additional charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.[13] When Licensee did not pay the regulatory fee debts for FYs 2010, 2012, 2013, 2014, 2015, 2016 and 2022, the Commission transferred those debts to the United States Department of Treasury for collection.[14] At the Commission's request, the United States Department of Treasury has returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. The Commission has authority under section 9A(c)(4) of the Act and section 1.1164(f) of the Rules to revoke licenses and authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Licensee to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made or show cause why the payment is inapplicable or should be waived or deferred.[15] Licensee is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f) of the Rules,[16] an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and

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

[10] 47 U.S.C. § 159(c)(3) (1993); 47 U.S.C. § 159A(c)(1) (2018). The RAY BAUM'S Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, section 9A(c)(1) now sets forth those penalties.

[11] 47 CFR § 1.1164.

[12] 31 U.S.C. § 3717; 47 U.S.C. § 159A(c)(2); 47 CFR § 1.1940.

[13] *See* 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letters, the Media Bureau notified Licensee of its failure to pay the Station's regulatory fees. *See* Letter from Nazifa Sawez, Assistant Chief, Audio Division, FCC Media Bureau, to Eddie Leroy Bridge, Jr. (MB Nov. 7, 2019); Email from Alexander T. Sanjenis, Assistant Chief, Audio Division, FCC Media Bureau (Apr. 8, 2022, 2:15 PM EDT); Email from Robin Lott, Audio Division, FCC Media Bureau (Mar. 28, 2023, 6:12 PM EDT).

[14] *See* 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917.

[15] The Commission may waive, reduce, or defer payment of fee debt where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207-08, paras. 49-51 (2019).

[16] 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.[17] Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.[18]

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

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,[19] Hope 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 2010, 2012, 2013, 2014, 2015, 2016 and 2022, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

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

ABA Routing Number 021030004

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

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

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

Hope 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 Hope 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, Hope 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): 1036 (for FY 2010), 1236 (for FY 2012), 1336 (for FY 2013), 1436 (for FY 2014), 1536 (for FY 2015), 1636 (for FY 2016), and 2236 (for FY 2022).

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to section 1.16 Commission's rules.[20] The written response must

[17] 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

[18] 47 U.S.C. § 159A(c)(4)(C)(ii)(iii) ; 47 CFR § 1.1164(f)(3).

[19] 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.11, 0.61, 0.231, 0.283 and 1.1164(f).

[20] 47 CFR § 1.16.

be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.[21] A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will assist in processing the response.

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

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Hope Broadcasting, Inc. c/o Eddie Bridges, Jr., 470 Leadmine Road, PO Box 1388, Gaffney, SC 29340.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director

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

Federal Communications Commission
Washington, D.C. 20554

June 30, 2023

DA 23-574
Released: June 30, 2023

Michael D. Basile, Esq.
Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400

Re: Petition for Declaratory Ruling by Teton Parent Corp., MB Docket No. 22-166, Pursuant to 47 CFR § 1.5004(f)(3)

Counsel:

The Commission has before it a Petition for Declaratory Ruling (PDR) regarding the foreign ownership limits prescribed by section 310(b)(4) of the Communications Act, as amended (the Act).[1] The PDR seeks approval to permit foreign investment of up to 100% in the aggregate of the equity and voting interests of Teton Parent Corp. (TPC).[2] TPC also requests specific approval for certain foreign entities to hold interests above 5% in TPC.[3]

On June 12, 2023, TPC filed a letter withdrawing the PDR.[4] The TPC Letter explains that TPC filed the PDR in connection with transfer of control applications seeking Commission consent to a series of transactions that would result in TEGNA, Inc. (TEGNA) becoming an indirect wholly owned subsidiary of TPC pursuant to an Agreement and Plan of Merger, dated as of February 22, 2022, as amended (the Merger Agreement) by and among several parties. TPC states that TEGNA terminated the Merger Agreement on May 22, 2023. Having withdrawn the PDR, TPC requests that the Commission terminate the associated proceeding.[5]

ACCORDINGLY, IT IS ORDERED that Teton Parent Corp.'s Petition for Declaratory Ruling is **DISMISSED**, and MB Docket No. 22-166 is terminated.

[1] 47 U.S.C. § 310(b)(4).

[2] Amended Petition for Declaratory Ruling of Teton Parent Corp. (filed Apr. 1, 2022). TPC had previously filed its initial petition on March 10, 2022, and then filed its first amendment on March 23, 2022.

[3] *Id.*

[4] Letter from Michael D. Basile, Counsel for Teton Parent Corp. to Marlen H. Dortch, Esq., FCC, MB Dkt No. 22-166 (filed Jun. 12, 2023) (the TPC Letter).

[5] TPC Letter at 1.

This action is taken pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, the Commission's implementing rules, and authority delegated by section 0.283 of the Commission's rules.[6]

Sincerely,

Holly Saurer
Chief, Media Bureau

[6] 47 U.S.C. § 310(b)(4); 47 CFR §§ 1.5000-1.5004; 47 CFR § 0.283.

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
Misuse of Internet Protocol (IP) Captioned Telephone Service	)	CG Docket No. 13-24
	)	
Petition for Rulemaking and Interim Waiver of Convo Communications, LLC	)	

ORDER

Adopted: June 30, 2023 **Released: June 30, 2023**

By the Chief, Consumer and Governmental Affairs Bureau:

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (FCC or Commission), on its own motion, extends previously granted waivers of the following Video Relay Service (VRS) rules: (1) the 50% cap on call minutes handled by VRS communications assistants (CAs) working at home;[1] (2) the requirement that CAs working at home have three years of experience as an American Sign Language (ASL) interpreter;[2] and (3) the ban on contracting with non-VRS-certified entities for VRS interpreting services.[3] In a June 2022 Order, the Commission waived these three requirements pending action on proposed amendments.[4] We extend each of the waivers for an additional six months, through December 31, 2023, or the effective date of Commission action amending the waived rule, if earlier.

2. *Background.* To prevent disruption in the provision of VRS during the COVID-19 pandemic, each of the above requirements was waived, on an emergency basis, in a series of orders by which the waivers remained in effect from early 2020 through June 30, 2022.[5] In the *2022 VRS*

[1] 47 CFR § 64.604(b)(8)(i).

[2] *Id.* § 64.604(b)(8)(ii)(A).

[3] *Id.* § 64.604(c)(5)(iii)(N)(*1*)(*iii*).

[4] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol (IP) Captioned Telephone Service; Petition for Rulemaking and Interim Waiver of Convo Communications LLC,* CG Docket Nos. 03-123, 10-51, and 13-24, Report and Order, Notice of Proposed Rulemaking, Order, and Declaratory Ruling, FCC 22-51 (June 30, 2022) (*2022 VRS Improvements Notice* or *2022 VRS Waiver Order*).

[5] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 2715 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals*

(continued….)

Improvements Notice, the Commission proposed to substantially modify these requirements to allow VRS providers more CA staffing flexibility. Specifically, the Commission proposed to: (1) raise the cap on the percentage of VRS traffic handled by at-home CAs from 50% to 80% of a VRS provider's monthly minutes; (2) reduce or eliminate the requirement that CAs working at home have three years of interpreting experience; and (3) allow a VRS provider to contract for interpretation services for up to 30% of its monthly minutes.[6]

3. In an Order accompanying the *2022 VRS Improvements Notice*, the Commission extended the previously granted waivers for an additional year, through June 30, 2023. Noting that there continued to be a shortage of ASL interpreters willing to work as VRS CAs, the Commission found that extending the waivers was warranted to avoid imposing substantial costs and burdens on VRS providers' ability to maintain a sufficient supply of CAs, pending action on the proposed amendments.[7]

4. *Waiver Standard.* A Commission rule may be waived for "good cause shown."[8] In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[9] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[10] Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[11]

5. *Discussion.* The record shows that the special circumstances prompting these waivers—a serious shortage of ASL interpreters available for work as VRS CAs—have not ended.[12] During the

(Continued from previous page)
with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 3018 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 4894 (CGB 2020); *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10893-94, paras. 54-55 (2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 14634 (CGB 2020); *Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03-123 and 10-51, Order, DA 21-1653 (CGB 2021) (allowing certain waivers to expire); *Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 22-324 (CGB 2022) (extending remaining waivers through June 30, 2022).

[6] *See 2022 VRS Improvements Notice*, paras. 25-50.

[7] *See 2022 VRS Waiver Order*, paras. 61-66.

[8] 47 CFR § 1.3.

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

[10] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

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

[12] *See 2022 VRS Waiver Order*, paras. 63-64; Comments of Convo Communications, LLC, CG Docket Nos. 03-123, 10-51, 13-24, at 4 (filed Jan. 9, 2023) (Convo NPRM Comments) ("Locating, hiring, and retaining local interpreters is a nationwide problem"); Comments of ASL Holdings Services, LLC d/b/a GlobalVRS, CG Docket Nos. 03-123, 10-51, and 13-24, at 3 (filed Jan. 9, 2023) (GlobalVRS NPRM Comments) ("Every VRS provider has provided the Commission with evidence underscoring 'the challenges of in interpreter staffing due to pandemic labor shortages,' as the Commission acknowledges."). The Commission has previously noted that this shortage, while aggravated by
(continued….)

pandemic, to cope with this shortage, the Bureau's emergency waiver orders allowed VRS providers to greatly increase their reliance on CAs working at home and on a contract basis.[13] More recent reports from VRS providers indicate that, despite the waiver extensions, the shortage of qualified ASL interpreters continues to present staffing challenges, compelling VRS providers to increase compensation for these highly skilled workers.[14] In these circumstances, allowing the workforce-preserving waivers of these rules to expire would impose even greater costs and burdens on VRS providers, hindering their ability to meet Commission-mandated standards for functionally equivalent relay service.

6. Extending these waivers pending action on the proposed rule changes will alleviate the costs and burdens described above, enabling providers to retain more of their CAs and continue hiring from an expanded pool of ASL interpreters, many of whom would not otherwise be available and willing to work for a VRS provider. This in turn will help ensure that VRS providers can maintain a high quality of service and have more resources for responding to unexpected traffic surges. In addition, in the event that the Commission subsequently adopts the proposals in the *2022 VRS Improvements Notice*, extending the waivers of these rules in the interim will avoid unnecessarily imposing on VRS providers the significant costs and burdens involved in "winding down" their use of at-home and contract CAs and then "restarting" such hiring after the adoption of amended rules.[15] Finally, waiving these rules since the start of the pandemic does not appear to have increased the risk of waste, fraud, and abuse of the TRS Fund.[16]

(Continued from previous page)
the COVID-19 pandemic, appears likely to continue well beyond the end of the pandemic. *See 2022 VRS Improvements Waiver Order,* paras. 63-64.

[13] *See 2022 VRS Improvements Waiver Order*, paras. 63-64. Substantial reliance on at-home CAs continues. *See* Convo NPRM Comments at 4 ("remote and limited contract interpreting offers a solution [to the interpreter shortage] by enabling VRS providers to draw from a nationwide interpreter pool"); Comments of Sorenson Communications, LLC, CG Docket Nos. 03-123, 10-51, and 13-24, at 3 (filed Jan. 9, 2023) ("At a time when it is already difficult to entice interpreters to commit time to VRS when community interpreting offers greater pay with more control over the work, the flexibility to offer video interpreters a work from home option has been important."); GlobalVRS NPRM Comments at 14 ("The ability to attract specialized trilingual Spanish language interpreters and those who support DeafBlind users by offering work at home employment has been particularly well received and enabled GlobalVRS to enhance its specialized service offerings."); Comments of Accessibility Advocates and Research Organizations, CG Docket Nos. 03-123, 10-51, and 13-24, at 3 (filed Jan. 9, 2023) ("The supply of CAs could increase with the additional remote flexibility that incentivizes the entry of interpreters who are unwilling or unable to work at a call center.").

[14] *See* Letter from Amanda Montgomery, Convo Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed June 2, 2023) ("The waiver of the . . . cap on the percentage of a VRS provider's minutes of VRS calls per month for at-home interpreting in response to the pandemic has been proven to be very successful in not only providing health safeguards for our Video Interpreters ('VIs') during the pandemic, but has allowed greater staffing availability and flexibility for Convo."); Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123, at 2 (filed May 18, 2023) ("current [VRS] rates do not allow for competitive wages for the highly skilled (and highly sought after) video interpreters needed for VRS, particularly in the age of interactive video conferencing"); Letter from Amanda Montgomery, Convo Communications, LLC, to Marlene H. Dortch, Secretary, FCC CG Docket 03-123 and 10-51, at 5 (filed May 9, 2023) (expressing "deep concern about the state of the pipeline for new interpreters. The pandemic adversely impacted many interpreter training programs, which have been slow to recover or shut down as a result…At the same time, the demand for interpreting services went up exponentially during the pandemic.").

[15] *See Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Order, 34 FCC Rcd 9880, 9882-84, paras. 6-7 (CGB 2019) (extending expiration date of pilot program for VRS at-home call-handling in part to avoid imposing wind-down and start-up costs on providers while the Commission considers adopting permanent program).

7. Therefore, to prevent the hardship to VRS providers and disruption of service to consumers that would result from termination of the waivers of these rules, we find good cause to extend the current waivers of these requirements through the earlier of December 31, 2023, or the effective date of amendments to these rules adopted by the Commission. These waivers are granted without prejudice to the Commission's final determinations on the proposals in the *2022 VRS Improvements Notice*.

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

9. *Additional Information*. For further information regarding this item, please contact Bill Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, 202-418-2716, or William.Wallace@fcc.gov.

10. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, this Order IS ADOPTED.

11. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, the effectiveness of the currently effective waivers of TRS rule sections 64.604(b)(8)(i), 64.604(b)(8)(ii)(A), and 64.604(c)(5)(iii)(N)(*1*)(*iii*), 47 CFR §§ 64.604(b)(8)(i), 64.604(b)(8)(ii)(A), and 64.604(c)(5)(iii)(N)(*1*)(*iii*), as described herein, is extended through the earlier of December 31, 2023, or the effective date of amendments to these rules adopted by the Commission.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

(Continued from previous page)

[16] *See 2022 VRS Waiver Order*, para. 65; GlobalVRS NPRM Comments, at 2-3 ("Provider and Commission experience with the at-home program has demonstrated that at-home interpreting has not only enabled the uninterrupted provision VRS through the Pandemic but proven effective in attracting and retaining interpreters without compromising Program integrity or introducing fraud, waste, and abuse despite necessary rule waivers.").

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 23-576
Released: June 30, 2023

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

WC Docket No(s). 23-202

Comments Due: July 17, 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 **July 31, 2023**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] *See* 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day… unless the Commission has notified the applicant that the grant will not be automatically effective.").

applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **July 17, 2023**.[5] Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[6] Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[7] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.[8] Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or

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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*.

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.

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Appendix

1) **Applicant(s): AT&T Services, Inc., on behalf of its affiliate, Alascom, Inc. dba AT&T Alaska (AT&T)**
WC Docket No. 23-202, Comp. Pol. File No. 1851
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-202*%22))
Affected Service(s) – AT&T Residential Long Distance Service and AT&T Business Long-Distance Service
Service Area(s) – the following communities in Alaska: Akiachak, Akiak, Atmautluak, Chuathbaluk, Kasigluk, Koyuk, Kwethluk, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nunapitchuk, Tuluksak, and Tuntutuliak
Authorized Date(s) – on or after August 1, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On June 23, 2023, AT&T filed a letter to correct a typo in the caption of its initial application and to clarify that the correct name of the applicant is Alascom, Inc. d/b/a AT&T Alaska.

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	

ORDER

Adopted: June 30, 2023 **Released: June 30, 2023**

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (Commission) sets per-minute provider compensation for certain telecommunications relay services (TRS) supported by the Interstate Telecommunications Relay Services Fund (TRS Fund, or Fund) for the Fund Year beginning July 1, 2023, and ending June 30, 2024 (2023-24 Fund Year).[1] For Fund Year 2023-24, the per-minute compensation for interstate TRS provided through state programs shall be: (1) for traditional (TTY-based) TRS, $5.7204; (2) for speech-to-speech relay service (STS), $6.8514; and (3) for captioned telephone service (CTS), $2.6619. Per-minute compensation for IP Relay for Fund Year 2023-24 shall be $2.0480 per minute.

2. We also grant, on our own motion, limited temporary waivers of the June 30, 2023 expirations of the current TRS Fund compensation formulas for Video Relay Service (VRS) and Internet Protocol Captioned Telephone Service (IP CTS). The current compensation formulas for VRS are extended until August 31, 2023, and the current compensation formula for IP CTS is extended until November 30, 2023. Each waiver is effective through the applicable dates or the effective date of Commission action establishing a compensation plan for that service, whichever is earlier.

3. In addition, we determine the total TRS funding requirement and contribution factors that determine the amounts that telecommunications carriers and other covered service providers must contribute to the Fund. Based on the above compensation formulas, projected demand for each service, projected Fund administration expenses, and application of the projected surplus from the previous Fund year, the net funding requirement is $1,287,242,528. For support of TRS provided through state programs, we approve a carrier contribution factor of 0.00025, applied to contributors' interstate and international end-user revenues. For support of Internet-based TRS—VRS, IP CTS and IP Relay—we

[1] TRS enables an individual who is deaf, hard of hearing, or deafblind or who has a speech disability to communicate by telephone or other device through the telephone system. *See* 47 U.S.C. § 225(a)(3). TRS is provided in a variety of ways. Currently, interstate TRS calls and all Internet Protocol (IP) based TRS calls, both intrastate and interstate, are supported by the Fund. *See* 47 CFR § 64.604(c)(5)(ii).

approve a carrier contribution factor of 0.01615, applied to contributors' intrastate, interstate, and international end-user revenues.[2]

II. BACKGROUND

4. *TRS Fund Contributions*. On June 30, 2022, the Commission amended its rules to provide that TRS Fund contributions for the support of VRS and IP Relay are determined based on each TRS contributor's total intrastate, interstate, and international end-user revenues, in the same way that contributions for support of IP CTS are calculated.[3] Under the revised rule, telecommunications carriers and Voice over Internet Protocol (VoIP) service providers are required to contribute a percentage of intrastate as well as interstate end-user revenues to fund VRS and IP Relay, beginning July 1, 2023.[4]

5. *VRS Compensation*. The current tiered compensation formulas for VRS, adopted by the Commission in 2017, initially were set to expire June 30, 2021.[5] In a notice of proposed rulemaking adopted in March 2021, the Commission sought comment on setting VRS compensation for the next period.[6] To allow time for the completion of this rulemaking, the Commission waived the June 30, 2021 expiration date, extending the compensation plan through December 31, 2021.[7] On November 12, 2021, the Bureau found good cause to grant a further waiver, extending the current VRS compensation plan through June 30, 2022.[8] In a subsequent order, the Bureau extended the compensation plan for one additional year, through June 30, 2023.[9]

6. *IP CTS Compensation*. The current compensation formula for IP CTS, established by the Commission in 2020, was initially set to expire on June 30, 2022. In an Order adopted June 30, 2022, the Bureau found good cause to issue a limited waiver extending the IP CTS compensation formula through

[2] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*; *Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 13-24, FCC 22-49 (June 30, 2022) (*2022 VRS and IP Relay Contribution Base Order*) (including intrastate revenues in the contribution base for VRS and IP Relay).

[3] *Id.*; *see also Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 13-24 and 03-123, Report and Order, 34 FCC Rcd 11265 (2019) (*2019 IP CTS Contribution Base Order*) (including intrastate revenues in the contribution base for IP CTS).

[4] 47 CFR § 64.604(c)(5)(iii)(A); *2022 VRS and IP Relay Contribution Base Order*, para. 23.

[5] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Report and Order and Order, 32 FCC Rcd 5891 (2017) (*2017 VRS Compensation Order*).

[6] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021) (*2021 VRS Compensation Notice*).

[7] *Id*. at 8817, para. 40.

[8] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 36 FCC Rcd 15798 (CGB Nov. 12, 2021).

[9] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03-123 and 10-51, Order, DA 22-699 (CGB June 30, 2022) (*2022 TRS Funding Order*).

June 30, 2023.[10] In a notice of proposed rulemaking adopted in December 2022, the Commission sought comment on setting IP CTS compensation for the next period.[11]

7. *IP Relay*. On June 30, 2022, the Commission adopted a four-year compensation plan for IP Relay.[12] The Commission set a compensation amount of $1.9576 per minute, subject to annual adjustment by application of an inflation factor based on a cost index compiled by the U.S. Department of Labor.[13] In December 2022, the Commission proposed a technical amendment to clarify how the inflation adjustment factor should be calculated.[14]

8. On May 1, 2023, the TRS Fund administrator, Rolka Loube Associates LLC (Rolka Loube), submitted an annual report on the TRS Fund with recommendations for provider compensation, the TRS Fund budget, and contribution factors for the 2023-24 Fund Year.[15] On May 12, the Bureau sought comment on the administrator's recommendations.[16] The Commission received comments from Hamilton Relay, Inc. (Hamilton), Sorenson Communications, LLC. (Sorenson), and ClearCaptions, LLC. (ClearCaptions),[17] and reply comments from ZP Better Together, LLC, and ClearCaptions.[18] On June 28, the administrator filed a supplement to the annual report, updating the recommended budget and contribution factors and modifying its proposed formula for IP Relay compensation.[19]

III. DISCUSSION

A. Compensation for Traditional TRS, STS, CTS, and IP Relay

9. *Traditional TRS, STS, and CTS*. For traditional TRS, STS, and CTS, we approve Rolka Loube's per-minute compensation recommendations for the 2023-24 Fund Year: $5.7204 for interstate traditional TRS; $6.8514 for interstate STS; and $2.6619 for interstate CTS. These compensation levels represent increases in per-minute compensation of approximately 26.8% for traditional TRS, 21.5% for

[10] *Id.*

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

[12] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Petition for Rulemaking of Sprint Corporation*, CG Docket No. 03-123 and RM-11820, Report and Order, FCC 22-48 (rel. June 30, 2022) (*2022 IP Relay Compensation Order*).

[13] *Id.*, para. 9.

[14] *IP Relay Technical Amendment Notice*, paras. 47-48.

[15] Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate , CG Docket Nos. 03-123 and 10-51 (filed May 1, 2023), https://www.fcc.gov/ecfs/document/1050410304699/1 (2023 TRS Fund Report). Each May, the Fund administrator recommends TRS payment formulas and revenue requirements for the next Fund Year. 47 CFR § 64.604(c)(5)(iii)(E), (H).

[16] *Rolka Loube Associates Submits Payment Formulas and Funding Requirements for the Interstate Telecommunications Relay Services Fund*, Public Notice, DA 23-407 (CGB 2023) (*2023 TRS Report Public Notice*).

[17] Comments of Hamilton Relay, Inc. (filed May 26, 2023) (Hamilton Comments), Comments of Sorenson Communications, LLC. (filed May 26, 2023) (Sorenson Comments), Comments of ClearCaptions LLC (filed May 26, 2023) (ClearCaptions Comments).

[18] Reply Comments of ZP Better Together, LLC (filed June 2, 2023) (ZP Reply); Reply Comments of ClearCaptions, LLC (filed June 5, 2023) (ClearCaptions Reply).

[19] Rolka Loube, Payment Formula and Fund Size Estimate – Interstate Telecommunications Relay Services Fund for July 2023 through June 2024 – Updated June 26, 2023, CG Docket Nos. 03-123 and 10-51 (filed June 28, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/10629926913280 (2023 TRS Fund Report Supplement).

STS, and 13.66% for CTS.[20] Under the Multi-State Average Rate Structure (MARS) methodology adopted by the Commission in 2007, per-minute compensation for interstate use of these relay services is determined by aggregating each state program's payments for intrastate use of the relay service in the previous Fund Year and dividing total state payments by total intrastate minutes.[21] The calculation of MARS support levels for the current year is shown in Rolka Loube's report.[22] Hamilton supports the administrator's recommendations,[23] and no commenter opposes them. We conclude that Rolka Loube's recommended formulas correctly apply the MARS methodology.

10. *IP Relay*. Pursuant to the four-year compensation plan adopted by the Commission in 2022,[24] the per-minute compensation amount for Fund Year 2023-24 is the current year's compensation amount plus an inflation adjustment. The amount of this adjustment is determined by the change in the Employment Cost Index for private industry workers in professional, scientific, and technical services (the Index), as compiled by the Bureau of Labor Statistics of the U.S. Department of Labor, between the fourth quarter of 2021 (4Q2021) and the fourth quarter of 2022 (4Q 2022).[25] The IP Relay compensation amount for Fund Year 2022-23 is $1.9576 per minute.

11. The values of the Index for 4Q2021 and 4Q2022 are 149.2 and 156.1, respectively.[26] Based on its interpretation of the adjustment requirement, Rolka Loube initially calculated the inflation adjustment factor as *1/100 times the difference between the values* of the Index for the fourth quarter of 2022 and the fourth quarter of 2021, or 6.9%.[27] No comments were filed regarding the recommended IP Relay compensation formula. In its June 28 supplemental filing, the Fund administrator revises this calculation. Rolka Loube explains that, in the *2022 IP Relay Compensation Order*, the Commission defined the adjustment factor as "a percentage equal to *the percentage change in the index*" between those two quarters.[28] The administrator also notes that, in December 2022, the Commission proposed a technical amendment to eliminate any ambiguity as to how the inflation adjustment factor is calculated.[29] Based on its review of these Commission documents, Rolka Loube revises its calculation of the adjustment factor, so that it is calculated as the percentage change in the Index values from 4Q2021 to 4Q2022—or 4.62%.[30]

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[20] 2023 TRS Fund Report at 7-8. Consistent with previous compensation determinations, the STS plan includes a supplemental per-minute amount ($1.1311) to be used for STS outreach. *Id.*; *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20170, para. 57 (2007) (*2007 TRS Compensation Methodology Order*).

[21] *See 2007 TRS Compensation Methodology Order*, 22 FCC Rcd at 20151-61, paras. 16-38.

[22] 2023 TRS Fund Report at 5, Exh. 1-1.

[23] Hamilton Comments at 1.

[24] *See 2022 IP Relay Compensation Order*, FCC 22-48.

[25] *See id.,* para. 43; 47 CFR § 64.640(c)-(d). This index is found at https://beta.bls.gov/dataViewer/view/timeseries/CIS20154000000001. The formula also may be adjusted for recovery of exogenous costs. *See id.* § 64.640(e). T-Mobile, the only IP Relay provider, has not requested compensation for any exogenous costs.

[26] 2023 TRS Fund Report at 10.

[27] *See id*. at 9-10.

[28] *See 2022 IP Relay Compensation Order*, para. 43 (emphasis added); 2023 TRS Fund Report Supplement at 3.

[29] 2023 TRS Fund Report Supplement at 3; *IP Relay Technical Amendment Notice*, para. 48. The comment cycle on the *IP Relay Technical Amendment Notice* has ended.

[30] 2023 TRS Fund Report Supplement at 3.

12. We approve the adjustment factor as recalculated by the TRS Fund administrator. As stated in the *2022 IP Relay Compensation Order*, the purpose of the adjustment factor is "to account for inflation after the first year of the cycle."[31] The *2022 IP Relay Compensation Order* further states:

> We . . . direct the TRS Fund administrator to propose the compensation level for IP Relay that is adjusted from the previous year by a percentage equal to the percentage change in the Index between the first and fifth quarters specified in the report.[32]

In its May 1 report, however, the administrator calculated the factor differently—as the numerical change in the Index divided by 100.[33] In so doing, the administrator relied on the published text of the rule, which describes the inflation adjustment factor as "1/100 times the difference between the values of the Employment Cost Index" for the two relevant calendar quarters.[34] This formulation does not specifically express the Commission's intent that the adjustment factor be calculated as "the percentage change in the Index between the first and fifth quarters."[35] Further, the effect of the administrator's initial calculation is to represent the change in the index as a percentage of the Index's base value (100), i.e., the value that was arbitrarily assigned, when the Index was created, to represent cost levels for the base year of the Index. This calculation bears no logical relationship to the actual rate of inflation during the relevant 12-month period and thus cannot be a plausible interpretation of the Commission's intent in adopting the rule. Rather, the only reasonable interpretation of the Commission's intent is that the inflation adjustment factor should be calculated as stated in the *2022 IP Relay Compensation Order*—as the actual percentage change in the Index during the relevant period. We also note that no party has opposed the Commission's proposed technical amendment to "eliminate any ambiguity" in this regard.[36]

13. Therefore, we agree with the Fund administrator's conclusion, in its supplemental filing, that the adjustment factor should be calculated as the percentage change in the values of the Index for 4Q2021 and 4Q2022, in accordance with the Commission's express directive to the administrator in the *2022 IP Relay Compensation Order* and the Commission's proposed technical amendment.[37] The percentage change in the Index from 4Q 2021 to 4Q 2022 is 4.62%.[38] We therefore increase the compensation amount for IP Relay by 4.62%, to $2.0480 per minute for Fund Year 2023-24.

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[31] *2022 IP Relay Compensation Order*, para. 41; *see also id.*, para. 40 (noting that the adjustment factor under the previous methodology was similarly used to adjust the compensation level "for inflation in years following the first year of the cycle.").

[32] *Id.*, para. 43.

[33] 2023 TRS Fund Report at 9-10. Thus, Rolka Loube initially calculated the adjustment factor as follows: (156.1-149.2)/100 = .069.

[34] 47 CFR § 64.640(d).

[35] *2022 IP Relay Compensation Order*, para. 43; *see also* Bureau of Labor Statistics, Employment Cost Index, https://www.bls.gov/eci/factsheets/understanding-index-numbers-and-percent-changes-factsheet.htm (last visited June 29, 2023) (explaining how this type of index is generated and how to calculate percentage changes for a given period of time).

[36] *IP Relay Technical Amendment Notice*, para. 48.

[37] *See* 2023 TRS Fund Report Supplement at 3; *2022 IP Relay Compensation Order*, para. 43.

[38] (156.1-149.2)/149.2 =.0462.

B. Compensation for VRS and IP CTS

14. We grant, on our own motion, temporary waivers of the June 30, 2023, expirations of the current TRS Fund compensation formulas for VRS and IP CTS.[39] We extend the VRS compensation formula through August 31, 2023, and the IP CTS compensation formula through November 30, 2023—unless the Commission sets compensation with an earlier effective date for one or both of these services. This action will ensure that the continued provision of VRS and IP CTS is supported, without disruption.

15. *Waiver Standard*. A Commission rule may be waived for good cause shown.[40] In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.[41] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[42] Waiver of a rule is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest and will not undermine the policy underlying the rule.[43]

16. We find good cause to waive the expiration date of the current compensation formulas for VRS and IP CTS. Establishing a methodology and compensation level for each of the various relay services is inherently complex,[44] and while the Commission has sought comment on revised compensation plans for both services, it has not yet completed consideration and adoption of such revised plans.[45] Continuing the current compensation levels for VRS and IP CTS for short periods will provide certainty and stability to TRS providers pending final Commission action. If we were to let the current compensation plans expire without providing for interim payments, these services would cease to be

[39] In its comments, Hamilton also requested a limited waiver of the IP CTS expiration. Hamilton Comments at 2. However, the request omitted a discussion of why a waiver would be appropriate. We therefore grant a waiver on our own motion.

[40] 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

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

[42] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

[43] *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-128 (D.C. Cir. 2008).

[44] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 5469 (CGB 2020) (*2020 IP CTS Compensation Waiver Order*) (extending IP CTS compensation levels for three months to allow the submission of additional data for the Commission to reach an informed decision on IP CTS compensation); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 32 FCC Rcd 5142, 5147, para. 15 (CGB 2017) (extending the compensation period for VRS pending further action by Commission to establish a new compensation methodology); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 26 FCC Rcd 9972, 9980-81, paras. 22-23 (2011) (adopting interim VRS compensation levels pending Commission completion of a proceeding addressing VRS market structure and compensation methodology issues); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 21 FCC Rcd 7018, 7027, paras. 28-29 (CGB 2006) (extending the VRS compensation levels for one year or until the Commission adopts new VRS compensation levels pursuant to new cost recovery rules); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 18 FCC Rcd 12823, 12832-33, paras. 24, 26, 28 (CGB 2003) (adopting interim cost recovery compensation levels for TRS providers subject to modification pending further analysis of relevant cost data).

[45] *See supra* paras. 5-6.

available to consumers with disabilities who rely on them for functionally equivalent communication.[46] Under such circumstances, it is administratively efficient and consistent with prior practice to extend the current compensation formulas, pending resolution of Commission action.

17. Therefore, we direct the TRS Fund administrator to continue compensating providers of VRS and IP CTS under their current compensation formulas through August 31, 2023, for VRS and through November 30, 2023, for IP CTS, or the effective date of Commission action revising the applicable compensation formula, if earlier.[47] This action does not preclude a true-up of compensation for one or both services, should the Commission deem that necessary after determining the applicable compensation formulas.[48] Accordingly, until the expiration of this waiver, the current compensation formulas for VRS and IP CTS remain effective. VRS providers with more than 500,000 monthly minutes as of July 1, 2017, shall be paid $4.82 per minute for a provider's first 1,000,000 monthly minutes (Tier I); $3.97 per minute for monthly minutes between 1,000,001 and 2,500,000 (Tier II); and $2.63 per minute for monthly minutes exceeding 2,500,000 (Tier III).[49] VRS providers with 500,000 or fewer monthly minutes as of July 1, 2017, shall be paid $5.29 per minute (Emergent Tier) for the provider's first 500,000 minutes, and according to the otherwise applicable tiered formula, stated above, for monthly minutes exceeding 500,000.[50] IP CTS providers shall be paid $1.30 per minute for all compensable minutes.[51]

C. Funding Requirement and Carrier Contribution Factors

18. To calculate the annual net funding requirement, the Fund administrator sums the projected payments to TRS providers for each form of TRS (determined by multiplying the proposed compensation plan formula for each service category by the projected minutes of use for that category), adds administrative overhead, other funding requirements, and a budgetary reserve, and subtracts the projected surplus from the previous Fund Year.[52]

19. *Demand Projections*. For traditional TRS, STS, and CTS, Rolka Loube projects demand using recent historical data, an approach that has provided reasonably accurate results for these services.[53] For VRS, IP Relay, and IP CTS, Rolka Loube takes as a starting point the providers' aggregate demand projections for 2023-24, which in recent years have generally produced reasonably accurate results.[54] We find that Rolka Loube's TRS demand projections are reasonable for budgeting purposes.

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[46] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802, 8818, para. 43 (2021) (*2021 VRS Compensation Notice*).

[47] ClearCaptions, in its comments, supports the temporary continuation of the $1.30-per-minute formula for IP CTS while the Commission analyzes Rolka Loube's report and additional information submitted by ClearCaptions or other IP CTS providers. ClearCaptions Comments at 1.

[48] *See 2020 IP CTS Compensation Waiver Order*, 35 FCC Rcd at 5473, para. 11.

[49] *2017 VRS Compensation Order*, 32 FCC Rcd at 5934, Appx A.

[50] *Id.* at 5916-17, paras. 49-50.

[51] *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10870, para. 10 (2020).

[52] *See* 2023 TRS Fund Report at 4; *see also* 47 CFR § 64.604(c)(5)(iii)(H).

[53] 2023 TRS Fund Report at 13.

[54] *Id*.

20. *Compensation Requirements*. We approve Rolka Loube's proposed provider compensation requirements for relay services that use the MARS methodology—traditional TRS, STS, and CTS—which total $8,388,159.[55] We also approve the proposed funding requirements for IP-based TRS services, as modified by Rolka's supplemental filing.[56] As modified, the provider compensation requirements for IP-based TRS total $1,230,903,317.[57]

21. *NDBEDP and Fund Administration*. In addition to projected payments for TRS, Rolka Loube includes in its proposed funding requirement a $10,000,000 funding allocation for the National Deaf-Blind Equipment Distribution Program (NDBEDP).[58] As modified by its supplemental filing, Rolka Loube recommends a total of $25,287,515 for Fund administrative costs, including ongoing TRS research and reforms, database administration, Fund administration, the data collection agent costs, the Interstate TRS Fund Advisory Council, service provider audits, bankruptcy representation, an independent financial audit of the Fund, the development and implementation of an improper-payments audit plan approved by the Office of Management and Budget, and TRS user identity verification.[59] No comments were received regarding Rolka Loube's initially proposed allocation for administrative costs—which are reduced in its supplemental filing. We find the modified recommendation to be fair and consistent with prior year Fund administrative expenses.[60]

22. *Payment Reserve and Current Surplus*. In its May 1 report, in keeping with prior practice, Rolka Loube recommends that funding requirements include a two-month payment reserve, totaling $203,316,773.[61] In its supplemental filing, noting that revised compensation formulas for VRS and IP CTS are still under consideration by the Commission, Rolka Loube recommends increasing the reserve for Internet-based TRS to three months, resulting in a total reserve of $306,929,538.[62] Rolka

[55] *Id*., Exh. 2.

[56] 2023 TRS Fund Report Supplement, Exh. 2.

[57] *Id*., Exh. 2.

[58] 2023 TRS Fund Report at 14; *see also* 47 CFR §§ 64.6201-.6219.

[59] 2023 TRS Fund Report Supplement, Exh. 2; *see also* 2023 TRS Fund Report at 15.

[60] *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03-123 and 10-51, 36 FCC Rcd 10194, 10201, para. 19 (2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 6649, 6658, para. 23 (CGB 2020) (*2020 TRS Compensation Order*); *2019 TRS Compensation Order*, 34 FCC Rcd at 5181-82, para. 24; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 33 FCC Rcd 6300, 6306-07, para. 18 (CGB 2018).

[61] 2023 TRS Fund Report at 14. One commenter, Hamilton, supports this recommendation, Hamilton Comments at 7, and no commenters oppose it. A payment reserve is a precautionary measure to guard against the possibility of unanticipated demand for TRS that could unexpectedly increase the need for Fund payments in the course of a Fund Year. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 29 FCC Rcd 8044, 8053, para. 23 (CGB 2014); *see also Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Order and Notice of Proposed Rulemaking, 28 FCC Rcd 703, 707 n.20 (2013) (noting that the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(A), provides that an officer or employee of the federal government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation). To the extent that the reserve goes unused, it is not wasted but is turned over for use in the next Fund Year. *See* 47 CFR § 64.604(c)(5)(iii)(B).

[62] 2023 TRS Fund Report Supplement at 3.

Loube also anticipates that there will be a surplus from the current fund year, estimated at $294,266,000,[63] which it proposes to deduct from the funding requirement when determining the contribution factor.[64]

23. Commenting on the May 1 report, Sorenson suggests that, in light of the pendency of the VRS and IP CTS compensation rate proceedings, the Commission hold the projected surplus in reserve rather than subtracting it from the contribution base.[65] ZP Better Together, in its reply comments, agrees with Sorenson's proposal.[66]

24. We agree that, in light of these unresolved proceedings, it is prudent to consider precautionary measures to ensure the sufficiency of the Fund. However, rather than holding the projected surplus in reserve, we find it appropriate to adopt the recommendation in the administrator's supplemental filing to increase from two to three months the payment reserve for Internet-based TRS. With this one-time measure, we are confident that the Fund's resources will be sufficient to meet its payment obligations. We therefore do not see a need to stray from our normal practice of subtracting the surplus amount from the contribution base.

25. *Gross and Net Funding Requirements*. In summary, we conclude that Rolka Loube's demand projections are reasonable and with the adjustments discussed above, its recommended gross funding requirement of $1,581,508,528[67] is consistent with the Commission's rules on contribution computations.[68] We therefore adopt this funding requirement. Deducting the surplus of $294,266,000, as discussed above, the net funding requirement is $1,287,242,528.

26. *Contribution Factors*. In the May 1 report, Rolka Loube proposed contribution factors for the 2023-24 TRS Fund Year—0.01547 for Internet-based TRS and 0.0024 for non-Internet-based TRS—while noting that it anticipated submitting an updated contribution factor recommendation when new information became available.[69] In its supplemental filing, Rolka Loube proposed updated TRS Fund contribution factors of 0.01615 for Internet-based TRS and 0.00025 for non-Internet-based TRS.[70] In its supplemental filing, Rolka Loube adjusted these factors in light of its recommended changes in funding requirements, discussed above, and revised estimates of the respective contribution bases for Internet-based and non-Internet-based TRS.[71] The use of two different contribution factors is mandated by the Commission's *2019 IP CTS Contribution Base Order*[72] and *2022 VRS and IP Relay Contribution Base Order*.[73] The contribution factor for Internet-based TRS, applicable to contributors' intrastate, interstate, and international end-user revenues, is the ratio of the estimated IP CTS, VRS, and IP Relay funding requirements to the total intrastate, interstate, and international end-user revenues for the prior

[63] *Id*., Exh. 2. In the May 1 report, Rolka Loube estimated the surplus at $277,430,000. 2023 TRS Fund Report at 15.

[64] 2023 TRS Fund Report at 15.

[65] *See* Sorenson Comments at 2.

[66] ZP Reply at 2-3.

[67] 2023 TRS Fund Report Supplement, Exh. 2.

[68] 47 CFR § 64.604(c)(5)(iii)(A), (B).

[69] 2023 TRS Fund Report at 15-17 & Exh. 2.

[70] 2023 TRS Fund Report Supplement at 3-4 & Exh. 2.

[71] *Id*. at 3-4 & Exh. 2. The contribution base for Internet-based TRS is the total of contributors' intrastate, interstate, and international end-user revenues for the prior calendar year. The contribution base for non-Internet-based TRS is the total of contributors' interstate and international end-user revenues for the prior calendar year. *See* 47 CFR § 64.604(c)(5)(iii)(A), (B).

[72] *2019 IP CTS Contribution Base Order*, 34 FCC Rcd at 11273-74, para. 21 & n.57.

[73] *See 2022 VRS and IP Relay Contribution Base Order* at 9, para. 23.

calendar year.[74] The contribution factor for non-Internet-based TRS, which is applicable to interstate and international end-user revenues, is the ratio of the estimated funding requirement for interstate, non-Internet-based TRS to total interstate and international end-user revenues for the prior calendar year. We find that Rolka Loube's recalculation of contribution factors is accurate and we therefore approve the contribution factors for Internet-based TRS and non-Internet-based TRS.

IV. PROCEDURAL MATTERS

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

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED, pursuant to section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and sections 0.141, 0.361, 1.3 and 64.604(c)(5)(iii) of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, 64.604(c)(5)(iii), that this ORDER IS hereby ADOPTED.

29. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate traditional TRS, for the period from July 1, 2023, through June 30, 2024, in the amount of $5.7204 per interstate conversation minute.

30. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate STS, for the period from July 1, 2023, through June 30, 2024, in the amount of $6.8514 per interstate conversation minute.

31. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of interstate CTS, for the period from July 1, 2023, through June 30, 2024, in the amount of $2.6619 per conversation minute.

32. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP Relay in the amount of $2.0480 per conversation minute, for the period from July 1, 2023, through June 30, 2024.

33. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP CTS in the amount of $1.30 per conversation minute, for the period from July 1, 2023, through the earlier of November 30, 2023, or the effective date of Commission action establishing a revised compensation formula for that service.

34. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of VRS in accordance with the formulas applicable on June 30, 2023, for the period from July 1, 2023, through the earlier of August 31, 2023, or the effective date of Commission action establishing revised compensation formulas for that service.

35. IT IS FURTHER ORDERED that the net TRS Fund revenue requirement for Fund Year 2023-24 shall be $1,287,242,528, and the TRS Fund contribution factors shall be 0.00025 for non-Internet-based TRS and 0.01615 for Internet-based TRS.

[74] 2023 TRS Fund Report at 15-17.

36. 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 is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 23-578
Released: June 30, 2023

MEDIA BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DEADLINES FOR THE "ALL-IN" PRICING NPRM

MB Docket No. 23-203

Comment Date: July 31, 2023
Reply Comment Date: August 29, 2023

On June 20, 2023, the Commission released a *Notice of Proposed Rulemaking* (*NPRM*) that sought comment on a proposal to "enhance pricing transparency by requiring cable operators and direct broadcast satellite (DBS) providers to specify the 'all-in' price for service in their promotional materials and on subscribers' bills."[1] The Commission set deadlines for filing comments and reply comments in response to the *NPRM* at 30 and 60 days, respectively, after publication of the *NPRM* in the Federal Register.[2]

A summary of the *NPRM* was published in the Federal Register on June 30, 2023.[3] Accordingly, comments will be due on or before July 31, 2023, and reply comments on or before August 29, 2023. Commenters should follow the filing instructions provided in paragraph 23 of the *NPRM*.[4] The *NPRM* is available on the Commission's website.[5]

For additional information, contact Brendan Murray, Brendan.Murray@fcc.gov, of the Policy Division, Media Bureau, (202) 418-1573.

- FCC -

[1] *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket No. 23-203, FCC 23-52, para. 3 (rel. June 20, 2023).

[2] *Id*. at 1.

[3] 88 FR 42277 (June 30, 2023).

[4] *See NPRM* at para. 23.

[5] *See* https://docs.fcc.gov/public/attachments/FCC-23-52A1.docx (Word); https://docs.fcc.gov/public/attachments/FCC-23-52A1.pdf (PDF).

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DA 23-579
Released: July 3, 2023

BROADBAND DATA TASK FORCE BEGINS ACCEPTING CHALLENGES TO JUNE 2023 BROADBAND SERVICEABLE LOCATION FABRIC

WC Docket Nos. 11-10 and 19-195

By this Public Notice, the Broadband Data Task Force (Task Force) announces that entities can begin submitting bulk challenges to the latest, June 2023 version of the Broadband Serviceable Location Fabric. Bulk Fabric challenges submitted in advance of **September 8, 2023,** are most likely to be reviewed and adjudicated in time to be accounted for in the next iteration of the Fabric (December 2023). Bulk Fabric challenges submitted after September 8, 2023, will continue to be accepted and reviewed on a rolling basis, but would likely be adjudicated as part of a future version of the Fabric.[1]

On July 3, 2023, the Task Force announced that the June 2023 version of the Fabric is being made available in conjunction with the opening of the BDC filing window.[2] Fabric data are associated with a relevant "as-of" date for fixed broadband availability data reporting, and we therefore release an updated iteration of Fabric data in conjunction with the opening of each biannual BDC filing window for reporting broadband availability as of June 30 or December 31. The June 2023 Fabric data serves as the foundation for the collection of fixed broadband availability data as of June 30, 2023, which must be submitted no later than September 1, 2023.[3]

Bulk Fabric challenges must be submitted in the BDC system at http://bdc.fcc.gov. As of July 1, 2023, the BDC system only accepts bulk Fabric challenges based upon the data in the June 2023 Fabric.[4]

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[1] The Commission continues to accept challenges to the Fabric and broadband availability data on a rolling basis as contemplated by the Broadband DATA Act, the Commission's rules, and the Bipartisan Infrastructure Law. *See* Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, §802(b)(5)(C), 134 Stat. 228 (2020) (codified at 47 U.S.C. § 642(b)(5)(C)); 47 CFR § 1.7006(d); Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60102(h)(2)(E)(i), 135 Stat. 429 (2021) (codified at 47 U.S.C. § 642(b)(5)(C)(i)). The results of availability challenges will be updated on the National Broadband Map (NBM) as soon as they are resolved. The results of location challenges to the June 2023 Fabric are expected to be reflected in the Map by November 2023.

[2] *Broadband Data Task Force Announces Opening of the Third Broadband Data Collection Filing Window*, WC Docket Nos. 19-195, 11-10, Public Notice, DA 23-580 (WTB/WCB/OEA July 3, 2023). The June 2023 Fabric contains data from additional data sources and other improvements by the FCC and CostQuest, as well as the results of bulk Fabric challenges submitted by state and local governments and broadband providers on or before March 15, 2023.

[3] The FCC will publish the June 30, 2023 broadband availability data, reported and overlaid on to the June 2023 Fabric, in an update to the NBM in the fall.

[4] The Fabric data currently displayed on the NBM is the December 2022 Fabric, which form the foundation upon which ISPs reported their service availability as of December 31, 2022. *See* FCC, *Which Version of the Fabric Should I Use?* (Jan. 3, 2023), https://help.bdc.fcc.gov/hc/en-us/articles/11749189297947-Which-Version-of-the-Fabric-Should-I-Use- ("[i]ndividual challenges to both location and availability data, which are submitted directly using the National Broadband Map challenge interface, will also continue to be based on the version displayed on

Any pending bulk challenges to the December 2022 version of the Fabric submitted between March 15, 2023, and June 30, 2023, are being reviewed and adjudicated against the June 2023 Fabric and do not need to be refiled. All bulk challenges submitted on or after July 1, 2023, however, must be submitted against the June 2023 Fabric.

As a reminder, entities that had previously entered into a license agreement with CostQuest are receiving an email from CostQuest providing a link to download the June 2023 Fabric data for their covered areas.[5] Entities that have not yet entered into a license agreement with CostQuest for Fabric data (including internet service providers, state, local or Tribal governmental entities, or other entities wishing to use the Fabric data for purposes of participating in the BDC) may do so by following the instructions for obtaining access to the Fabric.[6]

Bulk Fabric challengers should submit their challenges to the June 2023 Fabric as soon as possible after receiving the new data, and in any case **no later than September 8, 2023,** to have the best opportunity for challenges to be considered in time for preparation of the December 2023 version of the Fabric. More information on best practices for Fabric challenges can be found in previous Task Force releases and on the BDC Help Center.[7]

For additional information and questions regarding the Broadband Data Collection, please visit the BDC website at https://www.fcc.gov/BroadbandData.

– FCC –

the map at the time of submission. Individual challenges from the NBM will be reviewed and aligned with updates CostQuest has made and the results of bulk challenges.

[5] CostQuest sent an email from nbfsupport@costquest.com to the Certifying Official identified in the Entity Information page of your BDC system registration providing a link to the updated data file.

[6] *See Broadband Data Task Force Announces the Availability of the Production Version of the Broadband Serviceable Location Fabric*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 22-668 (BDTF/WCB/OEA June 23, 2022). *See also* FCC, *Access the Fabric*, https://help.bdc.fcc.gov/hc/en-us/sections/10419330460827-Access-the-Fabric (last visited Jan. 17, 2023). More information about the Fabric may be found in the BDC Help Center at https://help.bdc.fcc.gov.

[7] *See Broadband Data Task Force Announces Recommended Best Practices for Challenges to Updated Broadband Serviceable Location Fabric*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 23-69 (BDTF Jan. 25, 2023); FCC, *How To Submit A Successful Bulk Fabric Challenge* (March, 2, 2023), FCC, https://help.bdc.fcc.gov/hc/en-us/articles/13308560752155-How-to-Submit-a-Successful-Bulk-Fabric-Challenge-, *Bulk Fabric Challenge FAQs* (Apr. 28, 2023), FCC, https://help.bdc.fcc.gov/hc/en-us/articles/9200359586971-Bulk-Fabric-Challenge-FAQs.

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DA 23-580
Released: July 3, 2023

BROADBAND DATA TASK FORCE ANNOUNCES OPENING OF THE THIRD BROADBAND DATA COLLECTION FILING WINDOW AND AVAILABILITY OF THE JUNE 2023 BROADBAND SERVICEABLE LOCATION FABRIC

WC Docket Nos. 11-10 and 19-195

By this Public Notice, the Broadband Data Task Force (Task Force) announces that the Broadband Data Collection (BDC) filing window for submitting broadband availability and other data as of June 30, 2023, opens today, Monday, July 3, 2023. Starting today, facilities-based broadband service providers may begin to file in the BDC system data that reflects where they made mass-market broadband internet access service available as of June 30, 2023.[1] Such entities, as well providers of fixed voice services, must also submit the subscription data as of June 30, 2023 required under Form 477 in the BDC system. All availability and subscription data must be submitted no later than September 1, 2023.[2]

Filers should submit their data in the BDC system at https://bdc.fcc.gov/bdc.[3] A recording of a webinar demonstrating how to use the BDC system is available on the "Education" tab at https://www.fcc.gov/BroadbandData/resources. More information on how to log in, navigate the BDC system, and submit data can be found in the detailed BDC System User Guide, and related video tutorials and help articles are available at the online BDC Help Center at https://www.fcc.gov/BroadbandData/Help. Information about the categories of broadband providers that must file availability data, the types of entities that may also submit verified availability data, and what data must be filed can be found at https://www.fcc.gov/BroadbandData/filers.

The Broadband Serviceable Location Fabric (Fabric), which serves as the foundation for the collection of fixed broadband availability data, has been updated for use in the as-of June 30, 2023, BDC filing round. Providers who are already licensees of the Fabric, and all other Fabric licensees (including

[1] *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36 FCC Rcd 1126, 1130-31, 33-34, paras. 10-11 & n.42, 16-17 (2021). Facilities-based broadband providers must have one or more end-user connections in service. The Broadband DATA Act requires the Commission to collect broadband Internet access service data from each "provider of fixed or mobile broadband Internet access service." Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) § 641(11). *See Broadband Data Task Force and Office of Economics and Analytics Announce Inaugural Broadband Data Collection Filing Dates*, Public Notice, DA 22-182 (BDTF/OEA Feb. 22, 2022) (*BDC Filing Window Public Notice*).

[2] These as-of dates and filing deadlines were established by the Commission in the *Second Order and Third Further Notice*. *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7484, para. 55 (2020); 47 CFR §1.7002; *see also BDC Filing Window Public Notice*.

[3] While broadband providers are no longer required to file broadband deployment information using FCC Form 477, we remind them that they must also continue to file Form 477 subscribership data and voice service availability data in the BDC system at http://bdc.fcc.gov.

state, local, and Tribal government and other third party entities), are receiving an email from the FCC's Fabric contractor, CostQuest, providing them with access to the June 2023 Fabric data.[4] Entities that have not yet entered into a license agreement with CostQuest for Fabric data (including internet service providers, state, local or Tribal governmental entities, or other entities wishing to use the Fabric data for purposes of participating in the BDC or non-commercial academic/public policy broadband research) may do so by following the instructions for obtaining access to the Fabric at the BDC Help Center.[5]

The new version of the Fabric incorporates data from updated data sources and other improvement efforts conducted by the FCC and CostQuest, and the results of Fabric challenges submitted by state, Tribal, and local governments, broadband service providers, and the public through the National Broadband Map. Changes from previous versions of the Fabric include additional Broadband Serviceable Locations and corrections to addresses, unit counts, building types, land use, and geographic coordinates.[6]

We encourage filers to submit their June 30, 2023, availability data as early as possible in the filing window. This will give filers an opportunity to address any problems with their data identified by the BDC system in time to make any necessary corrections in advance of the September 1, 2023, deadline. Failure to timely file required data in the new BDC system may lead to enforcement action and/or penalties as set forth in the Communications Act and other applicable laws.[7]

For additional information and questions regarding the Broadband Data Collection, please visit the BDC website at https://www.fcc.gov/BroadbandData.

– FCC –

[4] State, local and Tribal governments and other third-party licensees will also be provided access to the updated Fabric on a rolling basis as the Fabric is finalized. New licensees should follow the same steps to access the new version of the Fabric that the Task Force instructed for previous versions. *See Broadband Data Task Force Announces the Availability of the Production Version of the Broadband Serviceable Location Fabric*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 22-668 (BDTF, WCB, OEA June 23, 2022). *See also* FCC, *What is the Location Fabric?*, https://help.bdc.fcc.gov/hc/en-us/articles/5375384069659-What-is-the-Location-Fabric- (last visited June 16, 2023). More information about the Fabric, including what it is and how service providers, governmental entities, and third parties can access it may be found in the BDC Help Center at https://help.bdc.fcc.gov.

[5] *See Broadband Data Task Force Announces the Availability of the Production Version of the Broadband Serviceable Location Fabric*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 22-668 (BDTF/WCB/OEA June 23, 2022). *See also* FCC, *Access the Fabric*, https://help.bdc.fcc.gov/hc/en-us/sections/10419330460827-Access-the-Fabric (last visited June 16, 2023). More information about the Fabric may be found in the BDC Help Center at https://help.bdc.fcc.gov.

[6] Reference document explaining the Fabric and methodology can be found at: https://www.fcc.gov/BroadbandData/resources under the "Key Reference Documents" tab.

[7] *See All Facilities-Based Broadband Internet Access Service Providers Must File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 19-195, 11-10, Enforcement Advisory, DA 22-639, at 2-3 (EB June 15, 2022).

Federal Communications Commission
Washington, D.C. 20554

July 3, 2023

DA 23-581

Steve Dorsey
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Via Certified Mail – Return Receipt Requested and E-mail

Re: Data Network Identification Code Application, File No. DNC-NEW-20221011-00001

Dear Messrs. Dorsey and Marinelli:

This letter responds to the above-referenced application filed by E-MARCONI LLC (E-Marconi) on September 22, 2022.[1] On June 13, 2023, E-Marconi provided supplemental information for the record. In your application, you requested one Data Network Identification Code (DNIC) assignment intended for use on the EMARCONI network.

Per the guidelines of ITU-T Recommendation X.121,[2] the DNIC is: (1) to be used to enable data terminals on public data networks to interwork with data terminals on public telephone and telex networks and on Integrated Services Digital Networks (ISDNs); (2) for use in a network that has an international nature (*i.e.*, it spans several countries or geographic regions); (3) for use in providing service that involves the carriage of public data traffic; and (4) for use in a network that has the capability to efficiently interwork with existing public data networks and provides a capability for routing transit traffic. All requests for DNIC assignments are limited to those that strictly fit the guidelines.[3] As provided under the ITU guidelines, DNICs will be recovered if not used, or are no longer required by the network to which they had been allocated or are not used in accordance with these guidelines.[4]

Based on our review of your application, your request appears to be in accordance with the ITU-T guidelines. Accordingly, as of the date of this letter we are provisionally assigning to E-Marconi the following DNIC for utilization in the EMARCONI network for the services described in your application:

DNC-NEW-20221011-00001 310 0

[1] Application by E-MARCONI LLC for Data Network Identification Code, File No. DNC-NEW-20221011-00001 (filed Sept. 22, 2022) (E-Marconi DNIC Application).

[2] International Telecommunication Union, ITU-T Recommendation X.121, SERIES X: DATA NETWORKS AND OPEN SYSTEM COMMUNICATIONS Public Data Networks – Network Aspects; International Numbering Plan for Public Data Networks (Oct. 2000), https://www.itu.int/rec/T-REC-X.121-200010-I/en (ITU-T Recommendation X.121).

[3] *See*, *e.g.*, ITU-T Recommendation X.121, Annex G: Eligibility Criteria and Procedures for the Allocation of DNICs to Global Public Data Networks.

[4] ITU-T Recommendation X.121, sec. G.4 (Reclamation of Global DNICs).

We will notify the ITU-T Secretariat that E-Marconi has been provisionally assigned code 310 0 for use in the EMARCONI network.

E-Marconi must implement the assignment and file a notification in the FCC's International Communications Filing System (ICFS) for the file number referenced in this letter on or before January 3, 2024. DNIC assignments that have been held in excess of 18 months and that have not been implemented must be returned to this Administrator (FCC, Office of International Affairs, Telecommunications and Analysis Division) for reassignment pursuant to the guidelines.[5] Unless we are specifically notified of the actual implementation of the assignment by the due date, we will assume that implementation did not occur, and the assignment will be deemed to have expired, making the code above available for reassignment.

DNICs are not the property of any individual network operator and cannot be resold, traded or transferred.[6] DNICs may be transferred in the case of a network operator's merger, acquisition, divestiture, or joint venture. In the event of such a transaction, E-Marconi must file a DNC-NEW application in ICFS requesting prior approval for any DNIC transfer or assignment. In the event that E-Marconi changes its name, contact information, or network name, it must notify this office of that change within 30 days by filing a letter in the appropriate ICFS file number.

Please address any questions that you may have regarding this assignment to the address or phone number shown below.

Regards,

/*Stacey Ashton*/
Telecommunications Analyst

Federal Communications Commission
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[5] ITU-T Recommendation X.121, sec. 7.5 (Data Network Identification Codes for Global Public Data Networks) and Annex G, sec. G.1 (General Guidelines); *see also* E-Marconi DNIC Application, Question 8.

[6] ITU-T Recommendation X.121, sec. 7.5 (Data Network Identification Codes for Global Public Data Networks) and Annex G, sec. G.1 (General Guidelines).

PUBLIC NOTICE

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DA 23-582
Released: July 14, 2023

BROADCAST STATION TOTALS AS OF JUNE 30, 2023

The Commission has announced the following totals for broadcast stations licensed as of June 30, 2023:

AM STATIONS	4,463	
FM COMMERCIAL	6,675	
FM EDUCATIONAL	4,236	
TOTAL		**15,374**
UHF COMMERCIAL TV	1,011	
VHF COMMERCIAL TV	364	
UHF EDUCATIONAL TV	264	
VHF EDUCATIONAL TV	119	
TOTAL		**1,758**
CLASS A UHF STATIONS	351	
CLASS A VHF STATIONS	30	
TOTAL		**381**
FM TRANSLATORS & BOOSTERS	8,935	
UHF TRANSLATORS	2,457	
VHF TRANSLATORS	666	
TOTAL		**12,058**
UHF LOW POWER TV	1,580	
VHF LOW POWER TV	322	
TOTAL		**1,902**
LOW POWER FM	1,989	
TOTAL		**1,989**
TOTAL BROADCAST STATIONS		**33,462**

- FCC -

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 23-79
Table of Allotments, Television Broadcast	)	RM-11947
Stations (Kalispell, Montana)	)	
	)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: July 5, 2023 **Released: July 5, 2023**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking[1] issued in response to a Petition for Rulemaking filed by Sinclair Media Licensee, LLC (Petitioner),[2] the licensee of television station KCFW-TV (KCFW-TV or Station), channel 9, Kalispell, Montana. The Petitioner has requested the substitution of UHF channel 17 for VHF channel 9 in the Table of TV Allotments.[3] The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),[4] reaffirming its commitment to apply for channel 17.[5] No other comments were received.

2. We believe the public interest would be served by substituting channel 17 for channel 9 at Kalispell, Montana. In support of its channel substitution request, the Petitioner states that the Station has a long history of severe reception problems as a result of its operation on a VHF channel.[6] the Petitioner goes on to state that the Commission has recognized that VHF poses challenges for stations providing digital television service on those channels due to propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and result in large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels.[7] According to the Petitioner, KCFW-TV "has received numerous complaints from viewers unable to receive that Station's over-the-air signal, despite being able to receive signals from other local stations."[8] Thus, the Petitioner asserts that its channel substitution proposal will serve the public by resolving the over-the-air reception problems and enhancing viewer reception in KCFW-TV's service area. Moreover, an analysis conducted using the Commission's *TVStudy* software tool indicates

[1] *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Kalispell, Montana)*, MB Docket No. 23-79, Notice of Proposed Rulemaking, DA 23-160 (rel. Mar. 1, 2023) (*NPRM*).

[2] Petition of Sinclair Media Licensee, LLC for Rulemaking, (filed Jan. 9, 2023, LMS File No. 0000206500) (Petition).

[3] 47 CFR § 73.622(j).

[4] 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

[5] Sinclair Media Licensee, LLC Comments (rec. Apr. 12, 2023) (Sinclair Comments).

[6] *NPRM* at para. 2.

[7] *Id.* at para. 2 and n.2.

[8] *Id.* at para. 2.

that all but approximately 75 persons will continue to receive the Station's signal and the proposed change to channel 17 will result in a predicted increase in service to more than 38,000 persons.[9]

3. As proposed, channel 17 can be substituted for channel 9 at Kalispell, Montana, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,[10] at coordinates 48° 00' 48.0" N and 114° 21' 58.0" W. Although the Petitioner's proposal would result in a loss for a limited number of viewers (75 persons), we find that the overall benefits of the proposed channel change outweighs any possible harm to the public interest when taking into account the fact that the Commission considers such a loss to be *de minimis*.[11] The channel substitution will also resolve the over-the-air reception problems for current viewers, enhance viewer reception in KCFW-TV's service area, and provide new service to more than 38,000 persons not currently able to receive the Station.[12] In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:[13]

City and State	Channel	Power (kW)	Antenna HAAT (m)	Service Pop.
Kalispell, Montana	17	400	850	185,189

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.[14] An expedited effective date is necessary in this case to ensure that KCFW-TV can operate with improved service to its viewers as quickly as possible.

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

City and State	Channel No.
Kalispell, Montana	*15, 17

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Sinclair Media Licensee, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 17.

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

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[9] *Id*.

[10] 47 CFR § 73.625(a).

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

[12] We do not give any weight to the Petitioner's arguments concerning ATSC 3.0 reception given the prospective nature of its claims and limited availability of consumer devices. *See NPRM* at n.4; Sinclair Comments at 2.

[13] 47 CFR §§ 73.616, 73.623. Since the proposed facility is located within the Canadian coordination zone, concurrence from the Canadian government was required and has been obtained. *See NPRM* at n.9.

[14] 5 U.S.C. § 553(d)(3).

8. **IT IS FURTHER ORDERED,** That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-79 and RM-11947 **SHALL BE TERMINATED** and its docket closed.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
Amendment of Section 73.622(j),	)	
Table of Allotments, Television Broadcast	)	MB Docket No. 23-43
Stations (Coos Bay, Oregon)	)	RM-11944
	)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: July 5, 2023 **Released: July 5, 2023**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking[1] issued in response to a Petition for Rulemaking filed by Sinclair Eugene Licensee, LLC (Petitioner),[2] the licensee of television station KCBY-TV (KCBY-TV or Station), channel 11, Coos Bay, Oregon. The Petitioner has requested the substitution of UHF channel 34 for VHF channel 11 in the Table of TV Allotments.[3] The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),[4] reaffirming its commitment to apply for channel 34.[5] No other comments were received.

2. We believe the public interest would be served by substituting channel 34 for channel 11 at Coos Bay, Oregon. In support of its channel substitution request, the Petitioner states that the Station has a long history of severe reception problems as a result of its operation on a VHF channel.[6] The Petitioner goes on to state that the Commission has recognized that VHF channels pose challenges for stations providing digital television service on those channels due to propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and result in large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels.[7] According to the Petitioner, KCBY-TV "has received numerous complaints from viewers unable to receive that Station's over-the-air signal, despite being able to receive signals from other local stations."[8] Thus, Petitioner asserts that its channel substitution proposal will serve the public by resolving the over-the-air reception problems and enhancing viewer reception in KCBY-TV's service

[1] *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Coos Bay, Oregon)*, MB Docket No. 23-43, Notice of Proposed Rulemaking, DA 23-92 (rel. Feb.1, 2023) (*NPRM*).

[2] Petition of Sinclair Eugene Licensee, LLC for Rulemaking, (filed Jan. 9, 2023, LMS File No. 0000206501) (Petition).

[3] 47 CFR § 73.622(j).

[4] 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

[5] Sinclair Eugene Licensee, LLC Comments (rec. Apr. 4, 2023) (Sinclair Comments).

[6] *NPRM* at para. 2.

[7] *Id.* at para. 2 and n.2.

[8] *Id.* at para. at 2 citing Petition at 2.

area.[9] Moreover, an analysis conducted using the Commission's *TVStudy* software tool indicates that all but approximately 392 persons will continue to receive the Station's signal, and the proposed change to channel 34 will result in a predicted increase in service to more than 11,000 persons.[10]

3. As proposed, channel 34 can be substituted for channel 11 at Coos Bay, Oregon, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,[11] at coordinates 43° 23' 25.4" N and 124° 07' 50.3" W. Although the Petitioner's proposal would result in a loss for a limited number of viewers (392 persons), we find that the overall benefits of the proposed channel change outweighs any possible harm to the public interest when taking into account the fact that the Commission consider such loss to be *de minimis*.[12] The channel substitution will also resolve the over-the-air reception problems for current viewers, enhance viewer reception in KCBY-TV's service area, and provide new service to more than 11,000 persons not currently able to receive the Station.[13] In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:[14]

City and State	Channel	Power (kW)	Antenna HAAT (m)	Service Pop.
Coos Bay, Oregon	34	450	192	126,757

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.[15] An expedited effective date is necessary in this case to ensure that KCBY-TV can operate with improved service to its viewers as quickly as possible.

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

City and State	Channel No.
Coos Bay, Oregon	22, 34

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Sinclair Eugene Licensee, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 34.

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

8. **IT IS FURTHER ORDERED,** That should no petitions for reconsideration or petitions

[9] *Id.* at para. 2.

[10] *Id*.

[11] 47 CFR § 73.625(a).

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

[13] We do not give any weight to the Petitioner's arguments concerning ATSC 3.0 reception given the prospective nature of its claims and limited availability of consumer devices. *See NPRM* at n.4; Sinclair Comments at 2.

[14] 47 CFR §§ 73.616, 73.623.

[15] 5 U.S.C. § 553(d)(3).

for judicial review be timely filed, MB Docket No. 23-43 and RM-11944 **SHALL BE TERMINATED** and its docket closed.

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

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 23-585
Released: July 5, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON THE NATIONAL FOOTBALL LEAGUE'S SECOND REQUEST TO EXTEND WAIVER OF SECTION 96.39(C)(2) OF THE COMMISSION'S RULES

WT Docket No. 21-111

Comment Date: July 17, 2023
Reply Comment Date: July 24, 2023

The Wireless Telecommunications Bureau (Bureau) seeks comment on a request for an extension of waiver filed by the National Football League (NFL).[1] The Bureau granted the NFL a conditional waiver of section 96.39(c)(2) of the Commission's rules[2] governing the Citizens Broadband Radio Service .[3] The waiver allowed the NFL to continue operating its coach-to-coach communications systems in the event of a localized internet outage in NFL stadiums, during NFL football games but after authority to operate within the stadium had been obtained from a Spectrum Access System (SAS).[4] The waiver period was limited to the 2021-22 season and expired on February 13, 2022, after the conclusion of Super Bowl LVI.[5]

On September 7, 2022, the Bureau granted the NFL an extension of the waiver relief it granted in July 2021.[6] The waiver extension was limited to the 2022-23 season and expired on February 12, 2023, after the conclusion of Super Bowl LVII.[7]

The NFL filed a second extension request on May 31, 2023, this time seeking an extension of the waiver for a two-year period, subject to the same eight conditions that were included in the September 2022 waiver extension.[8] The NFL contends that an extension of the conditional waiver is needed in case simultaneous Internet outages occur during or immediately prior to a football game, preventing its system from connecting to a SAS.[9] The NFL also asserts that an extension will allow it to continue to assess the

[1] Request of the National Football League for Extension of CBRS Waiver, WT Docket No. 21-111 (filed May 31, 2023), https://www.fcc.gov/ecfs/document/1060138518494/1 (*NFL Second Waiver Extension Request*).

[2] 47 CFR § 96.39(c)(2).

[3] *The National Football League Request for Waiver of Section 96.39(c) of the Commission's Rules*, WT Docket No. 21-111, Order, 36 FCC Rcd 10489 (WTB 2021).

[4] *Id*. at 2-3, para. 6.

[5] *Id*. at 3, para. 6.

[6] *The National Football League Request to Extend Waiver of Section 96.39(c) of the Commission's Rules*, WT Docket No. 21-111, Order, 2022 WL 4118669 (WTB 2022) (*Waiver Extension Order*).

[7] *Id.* at 7, para. 12.

[8] *NFL Second Waiver Extension Request* at 7 (citing *Waiver Extension Order* at 4-5, para. 8).

[9] *Id.* at 6.

technical and regulatory aspects of additional workaround solutions in the event of a simultaneous Internet outage.[10]

The Bureau seeks comment on the NFL's request. To develop a complete record on the issues presented by this request, the proceeding will be treated, for *ex parte* purposes, as a "permit-but-disclose" proceeding in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b). Parties should file all comments and reply comments in **WT Docket 21-111.**

Filing Requirements. Interested parties may file comments on or before the date indicated on the first page of this document.[11] All filings must refer to Docket No. 21-111. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[12]

- Electronic Filers: Comments 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, 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.[13]

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

Ex Parte Rules. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[14] 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

[10] *Id.* at 5.

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

[12] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121-01 (1998).

[13] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (Mar. 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[14] 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 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).[15] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, please contact Mark DeSantis, Mobility Division, Wireless Telecommunications Bureau at Mark.DeSantis@fcc.gov or (202) 418-0678.

- FCC -

[15] *Id.* § 1.1206(b).

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

In the Matter of	)	
	)	
Request to Modify April 24, 2023 Waiver Order of the 5.9 GHz Band Rules to Permit Initial Deployment of Cellular Vehicle-to-Everything Technology	)	ET Docket No. 19-138

ORDER

Adopted: July 5, 2023 **Released: July 5, 2023**

By the Chiefs, Public Safety and Homeland Security Bureau, Office of Engineering and Technology, and Wireless Telecommunications Bureau:

I. Introduction

1. In this Order, the Public Safety and Homeland Security Bureau, the Office of Engineering and Technology, and the Wireless Telecommunications Bureau (collectively, the Bureaus) address the Request for Modified Waiver[1] by Audi of America, Inc., Ford Motor Company, Jaguar Land Rover, the Utah Department of Transportation, AAEON Technology Inc., Advantech Co., Ltd., Applied Information, Inc., Cohda Wireless Pty Ltd., Commsignia, Inc., Danlaw Inc., HARMAN International Industries, Inc., Kapsch TrafficCom USA Inc., and Panasonic Corporation of North America (collectively, the Joint Waiver Parties or Petitioners)[2] to modify the Bureaus' April 24, 2023 Joint Waiver Order.[3] Specifically, the Joint Waiver Parties request that the Bureaus remove the "20 dBm Transmitter Output Power" limit for OBUs from the technical parameters and restrictions the Bureaus imposed on the waiver order which granted authorization to the named Petitioners to deploy Cellular Vehicle-to-Everything (C-V2X) technology in the 5.9 GHz band.[4] For the reasons stated below, the Bureaus grant the Joint Waiver Parties' request to remove the 20 dBm Transmitter Output Power limit for OBUs from the conditions imposed on the Joint Waiver Order.

II. Background

2. *Joint Waiver Request*. On December 13, 2021, the Joint Waiver Parties asked the Commission to permit C-V2X-based operations that meet the technical parameters set forth in Appendix 1 of their filing on the upper 20-megahertz portion (5905-5925 MHz) of the 5.9 GHz band, pending adoption of final C-V2X-based rules.[5] Petitioners requested the waiver to allow (1) the named

[1] *See* Letter from the C-V2X Joint Waiver Parties to Marlene H. Dortch, Secretary, FCC, ET Docket No. 19-138 (filed Jun. 8, 2023) (*Request for Modified Waiver*), https://www.fcc.gov/ecfs/document/1060816922821/1.

[2] The Virginia Department of Transportation (VDOT), although a signatory on the December 13, 2021 Joint Waiver Request, is not a signatory on the instant waiver request.

[3] *See Request for Waiver of 5.9 GHz Band to Permit Initial Deployment of Cellular Vehicle-to-Everything Technology*, Order, ET Docket No. 19-138, DA 23-343 (PSHSB/OET/WTB rel. Apr. 24, 2023) ("Joint Waiver Order").

[4] *See Request for Modified Waiver* at 1.

[5] Request for Waiver of 5.9 GHz Band Rules to Permit Initial Deployments of Cellular Vehicle-to-Everything Technology, Ford Motor Company, et al., ET Docket No. 19-138, at Appendix 1 at 10-11 (filed Dec. 13, 2021)
(continued….)

automakers to deploy C-V2X-based On-Board Units (OBUs) in their cars sold in the United States; (2) the named state departments of transportation to deploy C-V2X operations, including Roadside Units (RSUs) and OBUs, throughout their respective state borders; and (3) identified equipment manufacturers to obtain the necessary equipment certifications for their C-V2X equipment.[6]

3. *Joint Waiver Order*. On April 24, 2023, the Bureaus waived the current Dedicated Short-Range Communication (DSRC) based rules applicable to intelligent transportation systems (ITS) operations to allow Petitioners to use C-V2X-based technology in the upper 30 megahertz (5.895-5.925 GHz) portion of the 5.850-5.925 GHz Band (5.9 GHz band) prior to adoption of final C-V2X-based rules.[7] Also, the Bureaus determined that C-V2X equipment subject to the Joint Waiver Order will operate in the 5905-5925 MHz portion of the 5.9 GHz band using a 20-megahertz channel.[8]

4. As a condition to the waiver grant, the Joint Waiver Order required that "[a]ll RSUs and OBUs authorized under [the] Order must operate using the technical characteristics and operating parameters, including power, height, and out-of-band emission limits, specified [in the following table], in order to ensure compliance with all existing technical rules applicable to ITS operations other than the requirement to use DSRC-based technology":[9]

C-V2X OBU and RSU Operations

Frequency Range	Channel Bandwidth	OBU Limits	RSU EIRP Limit
5905-5925 MHz	20 MHz	20 dBm Transmitter Output Power 33 dBm EIRP*; 27dBm EIRP within 5 degrees of horizontal	33 dBm EIRP

*EIRP (equivalent isotropically radiated power)

5. *Request for Modified Waiver*. On June 8, 2023, the C-V2X Joint Waiver Parties submitted the instant request for a modified waiver to remove the "20 dBm Transmitter Output Power" limit for OBUs from the technical parameters of the waiver grant.[10]

III. DISCUSSION

6. The C-V2X Joint Waiver Parties are seeking to modify the April 24, 2023 waiver grant pursuant to section 1.925 of the Commission's rules.[11] Section 1.925 states that the agency may grant a waiver if it is shown that the underlying purpose of the rule at issue would not be served or would be frustrated by application to the instant case, and a grant would be in the public interest, or where, "in view of unique or unusual factual circumstances," application of the rule would be inequitable, unduly

(*Joint Waiver Request*), https://www.fcc.gov/ecfs/file/download/DOC-5f6d7d2ef3400000-A.pdf?file_name=C-V2X%20Waiver%20Request%2012%2013%202021.pdf; Letter from the C-V2X Joint Waiver Parties to Marlene H. Dortch, Secretary, FCC, ET Docket No. 19-138, at 3 (filed Apr. 20, 2022) (*Joint Waiver Request Supplement*), https://www.fcc.gov/ecfs/document/104201266008794/1; C-V2X Joint Waiver Parties Aug. 29, 2022 Reply Comments at 11 (correcting power spectral density bandwidth units used in Out-of-band emission ("OOBE") limits table in *Joint Waiver Request* Appendix 1 at 11 from MHz to kHz).

[6] *Joint Waiver Request* at 4-5.

[7] The Bureaus waived sections 90.375, 90.377, 90.379, 95.3163, 95.3167, and 95.3189 of the Commission's rules, 47 CFR §§ 90.375, 90.377, 90.379, 95.3163, 95.3167, and 95.3189. *See* Joint Waiver Order at 10-11.

[8] *See Id*. at 9.

[9] Joint Waiver Order at 9-10.

[10] *Request for Modified Waiver* at 1.

[11] 47 CFR § 1.925.

burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[12] In addition, section 1.3 provides that the Commission may waive any provision of its rules on its own motion for good cause.[13]

7. We find that removal of the 20 dBm Transmitter Output Power limit for OBUs is warranted under section 1.925. In the Joint Waiver Order, the Bureaus imposed a set of conditions and technical restrictions, including the OBU Transmitter Output Power limit requirement, to ensure that federal radiolocation services and DSRC incumbents in the band would be protected from potentially harmful interference from C-V2X operations.[14] Petitioners contend that the 20 dBm Transmitter Output Power limit "is unnecessary from an interference protection standpoint" and "forces the use of specific antenna designs to achieve the maximum permitted EIRP levels and restricts our ability to use higher conducted power limits while still complying with the EIRP levels in the Joint Waiver Order."[15] Petitioners further argue that by restricting "design flexibility," the limit creates an "unnecessary burden for waiver grantees."[16]

8. Petitioners correctly point out that the National Telecommunications and Information Administration recommended limits it deemed sufficient to protect federal systems from potential interference from C-V2X operations, in terms of EIRP, during the waiver period, and did not require a Transmitter Output Power limit.[17] The waiver grant, on the other hand, was conditioned on both a Transmitter Output Power limit representing the signal level entering the antenna and an EIRP limit representing the signal level transmitted from the antenna.[18] We agree with Petitioners that the EIRP limit is appropriate and sufficient to ensure coexistence with other users of the band, including federal radar systems and DSRC operations, and that the removal of the Transmitter Output Power limit would not change the interference dynamics among these systems sharing the band. We also note that the Commission has moved away from defining the transmitter output power limit and antenna gain requirement in recent rulemakings in order to provide product design flexibility to manufacturers.[19]

9. The conditions the Bureaus imposed on the Joint Waiver Order are not intended to add unnecessary burden or constraint on the deployment of C-V2X-based technology. Rather, the Bureaus intended by their Joint Waiver Order "to encourag[e] widespread deployment of ITS operations using V2X technology" and to "serve the public interest by advancing vehicular safety and promoting

[12] 47 CFR § 1.925(b)(3)(i)-(ii).

[13] 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); *see also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[14] *See* Joint Waiver Order at 8-11.

[15] *Request for Modified Waiver* at 1.

[16] *Id*. at 2.

[17] *See id.* at 1; *see also* Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Ronald T. Repasi, Acting Chief, FCC Office of Engineering and Technology, ET Docket No. 19-138 (filed April 14, 2023) at 3, https://www.fcc.gov/ecfs/document/1041481775855/1.

[18] *See* Joint Waiver Order at 9.

[19] *See Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, GN Docket No. 17-183, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852, 3860 paras. 17-19, Table 3: Expanded Unlicensed Use of the 6 Gigahertz Band, 3919-3924, paras. 181-194 (2020); 47 CFR §§ 15.407(a)(4)-(8). *See also 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, 2468-70 paras. 335-342 (2020); 47 CFR §§ 27.50(j)(1)-(5).

interoperability."[20] To deny the request for a modified waiver and retain the requirement at issue would be contrary to the public interest, and contrary to the Commission's stated intention in the *5.9 GHz First R&O*,[21] as it would preclude rapid deployment of C-V2X technology in the 5.9 GHz band. Accordingly, the underlying purpose of the Commission's rules governing ITS operations would be frustrated by insisting on application of the 20 dBm OBU Transmitter Output Power limit.[22] We therefore grant the request for a modified waiver to the extent necessary and amend the conditions on the April 24, 2023 waiver grant provided in the C-V2X OBU and RSU Operations table in paragraph 24 to read as follows:

C-V2X OBU and RSU Operations

Frequency Range	Channel Bandwidth	OBU Limits	RSU EIRP Limit
5905-5925 MHz	20 MHz	33 dBm EIRP*; 27dBm EIRP within 5 degrees of horizontal	33 dBm EIRP

*EIRP (equivalent isotropically radiated power)

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the request to modify the Bureaus' April 24, 2023 Joint Waiver Order to remove the 20 dBm Transmitter Output Power limit for OBUs as a condition of the waiver, is HEREBY GRANTED.

11. This action is taken under delegated authority pursuant to sections 0.31, 0.131, 0.191, 0.241, 0.331 and 0.392 of the Commission's rules, 47 CFR §§ 0.31, 0.131, 0.191, 0.241, 0.331, and 0.392 and the *5.9 GHz First R&O*.[23]

[20] Joint Waiver Order at 5.

[21] *See Use of the 5.850-5.925 GHz Band*, ET Docket No. 19-138, First Report and Order, Further Notice of Proposed Rulemaking, and Order of Proposed Modification, 35 FCC Rcd 13440, 13465 para. 56 (2020), *petitions for review denied sub nom. Intelligent Transp. Soc'y of America v. FCC,* 45 F.4th 406 (D.C. Cir. 2022) (*5.9 GHz First R&O*).

[22] *See* 47 CFR § 1.925(b)(3)(i).

[23] *5.9 GHz First R&O* at 13464-65, paras. 55-56.

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief, Public Safety and Homeland Security Bureau

Ronald T. Repasi
Chief, Office of Engineering and Technology

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

PUBLIC NOTICE

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

News media information 202-418-0500
Internet: http://www.fcc.gov (or ftp.fcc.gov)
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DA No. 23-587

Report No. TEL-02289 **Thursday July 6, 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-214-20230209-00014 E Innercity Fibernet LLC
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority Date of Action: 06/30/2023

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

Innercity is a Washington limited liability company. The following three individuals, all U.S. citizen, and entity have a 10% or greater direct interest in Innercity: Tom Spackman (33.03%), Maureen Casey (13.49%), Jimmy Chiles (13.16%), and the Estate of Michael Casey, a California entity (Timothy P. Casey, Trustee; Nancy M. Casey, beneficiary; both U.S. citizens) (13.49%).

ITC-214-20230228-00024 E Voicecentral LLC
International Telecommunications Certificate
Service(s): Individual Switched Resale Service
Grant of Authority Date of Action: 06/30/2023

Voicecentral LLC (Voicecentral) has 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).

Voicecentral, a Florida limited liability company, is owned by the following three individuals, all U.S. citizens: Christopher S. Dangelo (33.33%), Brian P. Helmke (33.33%), and Chad S. Zakim (33.33%).

ITC-214-20230424-00052 E DASH LIGHT TELECOM LLC

International Telecommunications Certificate

Service(s): Individual Facilities-Based Service, Individual Switched Resale Service

Grant of Authority Date of Action: 06/30/2023

Dash Light Telecom LLC (Dash Light) 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).

Dash Light, a New York limited liability company, is owned by two individuals, both U.S. citizens: Jeffrey Wasserman (60%) and Dashmir Dalipi (40%).

ITC-214-20230530-00069 E Humane, Inc.

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 06/30/2023

Humane, Inc. (Humane) 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).

Humane is a Delaware corporation. The following three individuals, all U.S. citizens, hold a 10% or greater direct or indirect interest in Humane: Bethany Bongiorno (13% equity and voting), Imran Chaudhri (13% equity and voting), and Sam Altman (14.93% equity and voting through a number of holding companies none of which individually holds 10% or greater ownership interest in Humane).

INFORMATIVE

ITC-214-20040205-00045 Satcom Direct Government, Inc.

By letter dated June 26, 2023, Satcom Direct Communications Inc. (Satcom Direct) notified the Commission that Satcom Direct has changed its name to Satcom Direct Government Inc.

ITC-214-20081029-00480 Allo Communications LLC

By letter dated June 28, 2023, ALLO Asset Entity 1, LLC, a Delaware limited liability company, (ALLO Asset) and ALLO Infrastructure Holdco, LLC, a Delaware limited liability company (ALLO Infrastructure), each a wholly owned subsidiary of ALLO Communications, LLC (ALLO), notified the Commission that beginning on or after June 22, 2023, ALLO Asset and ALLO Infrastructure will provide international telecommunications services pursuant to the international section 214 authorization held by ALLO (ITC-214-20081029-00480).

SURRENDER

ITC-214-20140322-00098 DATI CLOUD, LLC

By letter dated June 22, 2023, Dati Cloud, LLC notified the Commission that it surrendered its international section 214 authorization effective June 22, 2023.

ITC-214-20150617-00149 Aspider Solutions US Inc

By letter dated June 26, 2023, ASPIDER Holding B.V. (ASPIDER Holding) notified the Commission that its subsidiary ASPIDER Solutions US, Inc. no longer exists and surrendered ASPIDER Solutions US, Inc.'s international section 214 authorization effective June 26, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

PUBLIC NOTICE

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DA No. 23-588

Report No. SAT-01740 **Friday July 7, 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-20230522-00120 E S3139 Orbital Sidekick, Inc.
Special Temporary Authority
Grant of Authority Effective Date: 07/03/2023

On July 3, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Orbital Sidekick, Inc. for a period of up to 30 days to operate its GHOSt-01 satellite in the 402-403 MHz band (Earth-to-space) using a center frequency of 402.9 MHz and bandwidth of 40 kHz.

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	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

ORDER

Adopted: July 7, 2023 **Released: July 7, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) extends, for an additional year, the waiver pausing both the phase-out of Lifeline support for voice-only services and the increase in Lifeline minimum service standards for mobile broadband data capacity. Without this decision, support for services that meet only the voice minimum service standard, which currently stands at $5.25 per month, would be eliminated in most areas on December 1, 2023.[1] Additionally, the minimum service standard for mobile broadband data capacity would rise from 4.5 GB to 20 GB per month beginning December 1, 2023.[2]

2. Last year, when considering the then-newly established Affordable Connectivity Program (ACP) and the prospect of the Commission's since-released *Future of USF Report*,[3] we found good cause to pause the scheduled changes to the Lifeline program for one year to consider whether longer-term changes to the program were warranted.[4] As discussed below, we find good cause to extend this pause for an additional year to understand the impact of the ACP on Lifeline subscribers' use of their Lifeline benefit. Additionally, this pause will give the Commission the opportunity to fully consider the results of the inaugural ACP transparency data collection[5] and the recommendations presented in the *Future of USF Report*.[6] This pause will extend until December 1, 2024.

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[1] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3989-97, paras. 73-98 (2016) (*2016 Lifeline Order*); 47 CFR § 54.403(a)(2)(iv), (v).

[2] *2016 Lifeline Order*, 31 FCC Rcd at 3997, paras. 94, 97.

[3] *See Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report, FCC 22-67 (2022) (*Future of USF Report*).

[4] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Order, DA 22-706, at 5-8, paras. 12-22 (WCB 2022) (*2022 Waiver Order*).

[5] *See Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 22-87, at 4-30, paras. 8-56, 59 (2022) (*ACP Transparency Data Collection Order*).

[6] *See Future of USF Report* at 31-40, paras. 58-74.

II. BACKGROUND

3. In the *2016 Lifeline Order*, the Commission adopted changes to the Lifeline program meant to expand low-income consumers' access to robust and affordable broadband services.[7] The Commission coupled a phase-in of higher mobile broadband data capacity minimum service standards with a phase-down in Lifeline support for voice-only services.[8] This effort was meant to "avoid undue consumer disruption and to allow Lifeline providers sufficient time to adjust operations as the Commission moves from a primarily voice-only Lifeline program to a Lifeline program embracing broadband services."[9]

4. The *2016 Lifeline Order* scheduled the first step of the phase-down in Lifeline support for voice-only services to begin on December 1, 2019, when support was reduced from $9.25 to $7.25.[10] The next step was taken on December 1, 2020, when support was reduced from $7.25 to $5.25.[11] The *2016 Lifeline Order* contemplated a complete phase-out of Lifeline support for such services on December 1, 2021, when support for voice-only services was to be eliminated in most areas.[12] The Bureau, however, took action to pause the phase-out of voice-only services for one year, until December 1, 2022, recognizing the importance that voice service plays to some Lifeline subscribers and the role it plays in ensuring consumers' access to emergency services during the pandemic.[13] The Bureau again paused the phase-out of voice-only services for one year, until December 1, 2023, citing similar reasons, in addition to the need to understand how the ACP impacts Lifeline and to thoroughly evaluate the future of USF programs.[14]

5. The mobile broadband data capacity minimum service standards were created to provide services that allow consumers to experience modern day connectivity, without mandating the purchase of prohibitively expensive offerings.[15] To this end, the *2016 Lifeline Order* adopted a gradual increase in minimum service standards until December 1, 2019.[16] Starting in 2019, the Bureau was to use a formula for future annual minimum service standard increases for mobile broadband data capacity with data contained in the Commission's annual Mobile Wireless Competition Report.[17] Specifically, the formula requires the Bureau to: (1) divide the total number of mobile-cellular subscriptions in the United States by the total number of American households and round to the nearest hundredths place before multiplying by; (2) the percentage of Americans who own a smartphone, and rounding this number to the nearest hundredth before multiplying by; (3) the average data used per mobile smartphone subscriber. The product of (1)-(3) is rounded to the nearest hundredths and then multiplied by 0.7, and the result is rounded up to the nearest 250 MB.[18]

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[7] *2016 Lifeline Order*, 31 FCC Rcd at 3966-77, 3989-97, paras. 12-43, 73-98.

[8] *Id.* at 3985-86, paras. 62-65.

[9] *Id.* at 3985, para. 62.

[10] *Id.* at 3986, para. 64; 47 CFR § 54.403(a)(2)(ii).

[11] *2016 Lifeline Order*, 31 FCC Rcd at 3986, para. 64; 47 CFR § 54.403(a)(2)(iii).

[12] *2016 Lifeline Order*, 31 FCC Rcd at 3986, para. 64; 47 CFR § 54.403(a)(2)(iv).

[13] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Order, DA 21-1389, at 6-8, paras. 13-18 (WCB 2021) (*2021 Waiver Order*).

[14] *See 2022 Waiver Order* at 5-8, paras. 12-22.

[15] *See 2016 Lifeline Order*, 31 FCC Rcd at 3989, para. 71.

[16] *See* 47 CFR § 54.408(b)(2)(ii).

[17] *See* 47 CFR § 54.408(b)(2)(ii).

[18] *See 2016 Lifeline Order*, 31 FCC Rcd at 3995-96, paras. 93-94; 47 CFR § 54.408(c)(2)(ii).

6. In 2019, the Commission found good cause to partially grant a petition from CTIA and others to waive the impending increase in the minimum service standard for mobile broadband data capacity, which would have seen the standard increase from 2 GB per month to 8.75 GB per month, and to establish a minimum service standard of 3 GB per month.[19] In 2020, when the minimum service standard was set to increase from 3 GB per month to 11.75 GB per month, the Bureau acted to partially grant a petition from the National Lifeline Association to waive the formula-defined increase and establish a minimum service standard of 4.5 GB per month.[20] In both 2019 and 2020, the Commission and Bureau respectively noted the difficulty of fully considering the affordability of increases in the minimum service standard for mobile broadband data capacity due to the failure of providers to provide cost data.[21] In 2021, absent Bureau action, the primary formula would have yielded an increase in the minimum service standard for mobile broadband data capacity to 18 GB per month.[22] Instead, the Bureau found good cause to pause the increase for one year, until December 1, 2022.[23] In 2022, the Bureau again found good cause to pause the increase for a year, until December 1, 2023.[24] This year, based on the typical formula for calculating increases, the minimum service standard for mobile broadband data capacity will increase to 20 GB per month beginning December 1, 2023.[25]

7. On January 14, 2022, the Commission adopted rules for the ACP.[26] The ACP provides a monthly discount of up to $30 for broadband service, and up to $75 a month for households on qualifying Tribal lands.[27] Under the ACP, participating providers, in addition to providing an ACP-supported broadband service to the household, can also offer a reimbursement up to $100 for a connected device per household, provided that the household contributes more than $10 but less than $50 for such connected

[19] *See Lifeline and Link Up Reform and Modernization et. al.*, WC Docket No. 11-42, Order, 34 FCC Rcd 11020, 11020, 11024, paras. 2, 13 (2019) (*2019 Waiver Order*); *see also* Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 27, 2019).

[20] *See Lifeline and Link Up Reform and Modernization et. al*., WC Docket No. 11-42, Order, 35 FCC Rcd 12958, para. 2 (WCB 2020) (*2020 Waiver Order*); *see also* National Lifeline Association Petition for Waiver of Lifeline Mobile Broadband Minimum Service standard and Voice Support Phase-Down, WC Docket No. 11-42 et. al. (filed Aug. 27, 2020).

[21] *See 2019 Waiver Order*, 34 FCC Rcd at 11023, para. 10; *2020 Waiver Order*, 35 FCC Rcd at 12963, para. 16.

[22] *See* 47 CFR § 54.408(b)(2)(ii)(D); *see also 2021 Waiver Order* at 1, para 1.

[23] *See 2021 Waiver Order* at 6-8, paras. 13-18.

[24] *See 2022 Waiver Order* at 6-7, paras. 14-17. Absent Bureau action, the minimum service standards for mobile broadband data capacity would have increased to 6.5 GB per month on December 1, 2022, as the most recent Communications Marketplace Report at the time of the *2022 Waiver Order's* release was older than 18 months, and the year over year change in average mobile data usage per smartphone user reported in the then most recent, Communications Marketplace Report was roughly 40 percent. *See* Federal Communications Commission, 2020 Communications Marketplace Report at 19. Fig. II.A.8 (Dec. 31, 2020); 54 CFR § 54.408(c)(2)(iii). The *2020*, *2021*, and *2022 Waiver Orders* each relied on the COVID-19 pandemic as one of several justifications for waiving increases in minimum service standards and the elimination of support for voice-only service. The Federal COVID-19 Public Health Emergency Declaration, which was effective when each of these three *Orders* were adopted, has ended. *See 2020 Waiver Order*, 35 FCC Rcd at 12958, 12961-12962, paras. 2, 12, 14; *2021 Waiver Order* at 1, 4-8, paras. 1, 9, 12-17; *2022 Waiver Order* at 4-6, paras. 8, 13-14; *see also* Centers for Disease Control and Prevention, *End of the Federal COVID-19 Public Health Emergency (PHE) Declaration*, https://www.cdc.gov/coronavirus/2019-ncov/your-health/end-of-phe.html (last visited July 7, 2023).

[25] *See* 47 CFR § 54.408(b)(2)(ii)(D).

[26] *See Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, 484, para. 1 (2022) (*ACP Order*).

[27] *See* 47 CFR § 54.1803(a).

device.[28] A connected device is defined in the Infrastructure Act as a laptop, desktop computer, or a tablet, and excludes cellular phones, smartphones, and tablets with cellular calling capabilities.[29]

8. The Infrastructure Act also instructed the Commission to initiate two additional actions: issue final rules for an ACP transparency data collection of information about the price and subscription rates of each Internet service offering received by households enrolled in the ACP;[30] and issue "a report [to Congress] on the options of the Commission for improving its effectiveness in achieving the universal service goals for broadband . . . ."[31] In November 2022, the Commission adopted final rules in its *ACP Transparency Data Collection Order*.[32] The rules require all providers participating in the ACP with enrolled subscribers[33] to submit aggregate ZIP code-level data on each plan where there is one or more ACP subscriber. [34]

9. The *Future of USF Report*, which was adopted on August 12, 2022,[35] found that a persistent minority of Lifeline consumers opt for voice-only Lifeline plans.[36] It also recommended that the Commission "initiate a rulemaking to evaluate how the Lifeline program can best operate with the Affordable Connectivity Program and examine lessons learned from implementation of the EBB Program and the Affordable Connectivity Program that may be able to be applied to Lifeline."[37] The *Report* further recommended that the Commission "consider continuing Lifeline support for voice-only service based on strong support in the record"[38] and "consider how best to revisit the minimum service standards prescribed by the *2016 Lifeline Order*."[39] The Commission has not had an opportunity to fully consider these recommendations.

III. DISCUSSION

10. The Bureau acts on its own motion to extend its waiver of the implementation of the phase-out in Lifeline support for voice-only services and the increase in the Lifeline minimum service standards for mobile broadband data capacity for one additional year, until December 1, 2024. In evaluating whether good cause exists for waiver of its rules,[40] the Commission considers whether the particular facts make strict compliance inconsistent with the public interest.[41] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation

[28] *See ACP Order*, 37 FCC Rcd at 538-539, paras. 110-12.

[29] 47 U.S.C. § 1752(b)(5).

[30] *See* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. F, tit. V, § 60502(c) (Infrastructure Act); *Affordable Connectivity Program*, WC Docket No 21-450, Notice of Proposed Rulemaking, FCC 22-44 (rel. June 8, 2022).https://www.fcc.gov/document/fcc-proposes-transparency-rules-affordable-connectivity-program.

[31] Infrastructure Act, div. F, tit. I, § 60104(c).

[32] *ACP Transparency Data Collection Order* at 54, paras. 128-130.

[33] *Id.* at 3-4, para. 7.

[34] The data submitted is meant to include information regarding service plan price, speed, and data caps, in addition to any equipment fees and the number of ACP subscribers for each plan. *ACP Transparency Data Collection Order* at 8-26, paras. 8-52.

[35] *See Future of USF Report* at 58, para. 121.

[36] *See id.* at 29-30, 35, paras. 55, 67.

[37] *See id.* at 31-32, para. 58.

[38] *See id.* at 35-36, paras. 67-68.

[39] *See id.* at 36-37, para. 69.

[40] *See* 47 CFR § 1.3.

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

of policy on an individual basis.[42] Waiver of the Commission's rules is therefore only appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[43] As further discussed below, the Bureau finds good cause to act on delegated authority to waive the Lifeline rules as described herein.[44]

11. Our decision to further extend this waiver stems from careful consideration of the ACP's impact on Lifeline subscribers and the affordable broadband market more broadly. Moreover, there is good cause to maintain the status quo until the Commission has the opportunity to consider the recommendations found in the *Future of USF Report*[45] and analyze the inaugural ACP transparency data collection.[46] These factors, as well as information showing a continued reliance on voice-only services among a subset of Lifeline subscribers,[47] warrant special consideration to avoid undue consumer disruption in the Lifeline marketplace. Thus, we find good cause to pause, until December 1, 2024, both the elimination of voice-only support and the increase in minimum service standards for mobile broadband data capacity.

12. *Voice Support Phase-Out.* Last year, we paused the scheduled phase-out in Lifeline support for voice-only services due to a heightened reliance on voice service,[48] the need for further understanding of how the ACP impacts the low-income communications market,[49] and the need to consider the findings of the *Future of USF Report*.[50] We continue to see a persistent minority of households still relying on qualifying Lifeline voice service for their connection needs. Indeed, approximately 350,000 Lifeline subscribers continue to subscribe to a voice-only plan.[51] It is unclear what effect the elimination of voice support would have on this population's ability to retain an affordable voice-service plan. Our action today ensures that these subscribers are not forced to subscribe to broadband bundled plans—which may be cost prohibitive and not useful to them—to maintain their access to a Lifeline-supported service. Our action also permits these households to maintain access to voice service that bridges a gap in the pursuit of universal service.[52] Further, we are particularly cognizant of the potential harm if a Lifeline subscriber loses their voice service and their access to services such as 911, 988, and other critical support hotlines.[53]

13. Also contributing to our decision for a further pause is the ACP. While the ACP

[42] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

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

[44] *See* 47 CFR § 0.291; *2016 Lifeline Order*, 31 FCC Rcd at 4120, para. 433.

[45] *See Future of USF Report* at 31-39, paras. 58-71.

[46] *See ACP Transparency Data Collection Order* at 27, para. 54.

[47] *See* USAC, Board Materials for April 2023, *High Cost & Low Income Committee Briefing Book* at 60-61 (2023), https://www.usac.org/wp-content/uploads/about/documents/leadership/materials/hcli/2023/2023.04.20-HCLI-Briefing-Book-Open-Session.pdf (*High Cost & Low Income Committee Briefing Book*) (2023) (noting that as of April 2023, there remains approximately 5 percent of Lifeline subscribers relying only on qualified voice service options).

[48] *2022 Waiver Order* at 6, para. 15.

[49] *Id.* at 6, para. 16.

[50] *Id.* at 6-7, para. 17.

[51] *High Cost & Low Income Committee Briefing Book* at 60-61.

[52] *See 2021 Waiver Order* at 7, para. 16 (finding that "retail rates for bundled broadband plans that would meet the Lifeline program's current minimum service standards for broadband data capacity far exceed the cost of plans that would qualify as Lifeline voice-only plans," which could require some Lifeline subscribers "to either move to a more expensive bundled broadband plan, or forego voice service altogether.").

[53] *See, e.g.*, National Domestic Violence Hotline, https://www.thehotline.org/ (last visited July 7, 2023).

currently serves more households[54] and provides a larger monthly reimbursement than Lifeline,[55] the ACP does not support voice-only services. We find that it is in the public interest to maintain access to a voice subsidy to meet the needs of non-broadband subscribers who do not or will not benefit from the ACP.[56] As such, we believe that a further pause in the complete phase-out of voice-only support is appropriate to allow the Commission to fully consider the future of its low-income affordability programs. Additionally, the *Future of USF Report* recommended that the Commission consider continuing Lifeline support for qualifying voice services.[57] Pausing the phase-out of voice-only support maintains the status quo and gives the Commission an opportunity to consider a more comprehensive approach for addressing this issue.

14. *Mobile Broadband Data Capacity Minimum Service Standards.* Last year, the Bureau paused the increase in the minimum service standard for mobile broadband data capacity, in part due to potential cost barriers that an increase would bring and data showing that Lifeline subscribers may not benefit from an increase in the usage allowance.[58] While this factor continues to influence our decision to extend the pause in minimum service standards for mobile broadband data capacity, the size of the increase in broadband data capacity indicated by the current formula and the results of the inaugural ACP transparency data collection add to our calculation that a further pause is in the public interest.

15. The data capacity minimum service standard for mobile broadband aims to balance the dueling goals of access and affordability, ensuring consumers have access to the robust service needed to participate in modern society while also ensuring consumers are able to afford such access. Absent our action, the current minimum service standard for mobile broadband data capacity would increase by roughly 344 percent to 20 GB per month.[59] Increasing the current minimum service standard by nearly four times its current level risks a standard so greatly increased that many Lifeline subscribers may not be able to afford a plan that offers qualifying broadband service, even with the Lifeline benefit.[60]

16. At the same time, Commission staff are currently implementing the ACP Transparency Data Collection consistent with the requirements of the Commission's Order[61] and the Infrastructure

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[54] *See High Cost & Low Income Committee Briefing Book* at 61; USAC, ACP Enrollment and Claims Tracker, https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited July 7, 2023).

[55] *See* 47 CFR § 54.1803; *see* 47 CFR § 54.403; *2022 Waiver Order* at 1, 6-7, paras. 1, 14-17.

[56] *See 2022 Waiver Order* at 5-6 paras. 13, 16 ("Moreover, the creation of a longer-term, broadband-focused program—the Affordable Connectivity Program—serves a primary policy goal of the *2016 Lifeline Order*: encouraging the Commission's low-income program to embrace broadband services, thereby raising significant questions about the further need of the Lifeline program in meeting low-income consumers' broadband needs"); *See also Future of USF Report* at 31, 35, paras. 58, 67 ("We recommend that the Commission initiate a rulemaking to evaluate how the Lifeline program can best operate with the Affordable Connectivity Program and examine lessons learned from implementation of the EBB Program and the Affordable Connectivity Program that may be able to be applied to Lifeline.").

[57] *See Future of USF Report* at 35-36, paras. 67-68.

[58] *See 2022 Waiver Order* at 7, paras. 18-19.

[59] 47 CFR § 54.408(c)(2)(ii).

[60] *2022 Waiver Order* at 3, para. 7 ("Relying on limited data provided by Lifeline service providers, the Marketplace Report found that 93 percent of Lifeline subscribers use less than 4 GB of data per month, and 76 percent of all reported Lifeline subscribers use less than 1 GB per month.").

[61] *See ACP Transparency Data Collection Order* at 30-31, para. 60; *see also* Federal Communications Commission, Information Collection Being Submitted for Review and Approval to Office of Management and Budget, 88 FR 37243 (June 7, 2023) (issuing 30-day notice on the information collection submitted to OMB); Federal Communications Commission, Information Collection Being Submitted for Review and Approval to Office of

(continued….)

Act.[62] The Commission anticipates that "[d]ata on the price and characteristics of plans with ACP enrolled households will help the Commission understand the value that ACP enrolled households are obtaining from the federal subsidy, including which plan characteristics are covered by the benefit, and whether the plans being subsidized are of adequate quality to engage in telework, telehealth, or remote education."[63] The data collected on the types of plans ACP households take today can help inform future Commission decisions about Lifeline minimum service standards. Allowing the Commission time to act after benefiting from this potentially valuable data source merits waiving an increase in minimum service standards.

17. Additionally, the *Future of USF Report* recommended that the Commission further consider revisions to the Lifeline program's minimum service standards.[64] Maintaining the current minimum service standards for mobile broadband data capacity allows the Commission time to consider how to establish a minimum service standard that evolves with changing technology and usage patterns. Further, a temporary pause here will ensure that qualifying service is affordable and meets the connectivity needs of low-income consumers on an ongoing basis. For all of these reasons, we find good cause to pause the Lifeline minimum service standards for mobile broadband data capacity.

IV. ORDERING CLAUSES

18. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 47 CFR § 54.401(b), 47 CFR § 54.403(a)(2), and 47 CFR § 54.408(b)(2)(ii)(D) of the Commission's rules ARE WAIVED to the limited extent provided herein. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page)
Management and Budget, 88 FR 15716 (Mar. 14, 2023) (issuing 60-day request for comment on information collection).

[62] Infrastructure Act, div. F, title V, § 60502(c).

[63] *ACP Transparency Data Collection Order* at 27, para. 54.

[64] *See Future of USF Report* at 36-37, para. 69.

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 (Koloa, Hawaii)	)	MB Docket No. 23-198
	)	RM-11950
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 6, 2023 **Released: July 7, 2023**

Comment Date: August 28, 2023
Reply Comment Date: September 12, 2023

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a Petition for Rulemaking (Petition) filed by SSR Communications, Inc. (Petitioner), requesting the allotment of Channel 272A at Koloa, Hawaii, as the community's first local service. In compliance with the Commission's procedures,[1] Petitioner concurrently filed a construction permit application and paid the necessary filing fee.[2]

II. BACKGROUND

2. Petitioner states that Koloa, Hawaii would receive its first FM service, and Koloa possesses all of the requisite characteristics of a bona-fide community for allotment purposes.[3] Koloa is a census designated place (CDP) with a 2020 U.S. Census population of 2,231 persons. It has its own fire department, public library, at least seven local churches, and U.S. Post Office and zip code (96756). Petitioner claims that there are numerous businesses and other organizations that incorporate the "Koloa" name. Petitioner contends that, if Channel 272A at Koloa, Hawaii is allotted, it will participate in the FM auction process, and if it is the successful bidder, it will promptly construct and operate the proposed station in accordance with the Commission's rules and procedures.

III. DISCUSSION

3. We believe that the Petitioner's proposed change in the FM Table of Allotments warrants consideration under Priority (3), because it would provide a first local service at Koloa, Hawaii.[4] A staff engineering analysis indicates that Channel 272A can be allotted to Koloa, Hawaii, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of

[1] *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14223, para. 18 (2006).

[2] *See* FCC File No. 0000214870 (filed May 16, 2023) (Application).

[3] Petition at 1.

[4] *See Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

8.3 km (5.2 miles) northwest of the community.[5] The reference coordinates are 21-58-24 NL and 159-29-45 WL. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, section 73.202(b) of the Rules,[6] as follows:

Community	Present	Proposed
Koloa, Hawaii	----	272A

IV. PROCEDURAL MATTERS

4. *Showings Required*. Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). Petitioner or any party that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.[7]

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

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.[8]

(b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.[9]

6. *Comments and Reply Comments*. Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,[10] 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).[11]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications

[5] 47 CFR § 73.207.

[6] 47 CFR § 73.202(b).

[7] 47 CFR § 1.420(d).

[8] 47 CFR § 1.420(j).

[9] 47 CFR § 1.420(g)(2).

[10] 47 CFR §§ 1.415, 1.419, and 1.420.

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

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.
- Currently, the Commission does not accept 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. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.[12]

7. *Service.* Pursuant section 1.420 of the Rules,[13] all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.[14] Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Matthew K. Wesolowski, CEO
SSR Communications, Inc.
740 Highway 49 North, Suite R
Flora, MS 39071
matt@wyab.com

8. *Ex Parte Notices– Restricted*. The proceeding this Notice initiates shall be treated as a "restricted" proceeding in accordance with the Commission's *ex parte* rules.[15] For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.[16] An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.[17] However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.[18] Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

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

[13] 47 CFR § 1.420.

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

[15] 47 CFR §§ 1.1200 *et seq.*

[16] 47 CFR § 1.1208.

[17] 47 CFR § 1.1204(a)(10).

[18] 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

9. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (http://apps.fcc.gov/ecfs/). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

10. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[19] do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.[20] This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.[21] 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.[22]

11. *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.

12. *Additional Information*. For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

[19] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[20] 47 CFR § 73.202(b).

[21] *See* 44 U.S.C. §§ 3501-3520.

[22] *See* 44 U.S.C. § 3506(c)(4).

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 (Lihue, Hawaii)	)	MB Docket No. 23-209
	)	RM-11951
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 6, 2023 **Released: July 7, 2023**

Comment Date: August 28, 2023
Reply Comment Date: September 12, 2023

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a Petition for Rulemaking (Petition) filed by SSR Communications, Inc. (Petitioner), requesting the allotment of Channel 292A at Lihue, Hawaii, as the community's sixth local service. In compliance with the Commission's procedures,[1] Petitioner concurrently filed a construction permit application and paid the necessary filing fee.[2]

II. BACKGROUND

2. Petitioner states that Lihue, Hawaii would receive its third competing FM commercial radio service.[3] It claims that Lihue is a census designated place (CDP) with a 2020 U.S. Census population of 6,455 persons.[4] Petitioner argues that the Commission has found previously that Lihue is a bona-fide community for FM allotment purposes.[5] Petitioner commits that, if Channel 292A at Lihue, Hawaii is allotted, it will participate in the FM auction process, and if it is the successful bidder, it will promptly construct and operate the proposed station in accordance with the Commission's rules and procedures.

III. DISCUSSION

3. We believe that the Petitioner's proposed change in the FM Table of Allotments warrants consideration under Priority (4), because it would provide a sixth local and a fourth FM commercial

[1] *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14223, para. 18 (2006).

[2] *See* FCC File No. 0000214886 (filed May 17, 2023) (Application).

[3] Petition at 1.

[4] US Census data states that Lihue, Hawaii is a CDP that has a 2020 U.S. Census population of 8,004 persons. *See* https://data.census.gov/all?q=lihue,+hawaii

[5] Lihue, Hawaii already has five local services licensed to the community that includes noncommercial educational FM Stations KHJC and KIPL, and commercial FM Stations KQNG-FM, KFMN, and KJMQ.

service at Lihue, Hawaii.[6] A staff engineering analysis indicates that Channel 292A can be allotted to Lihue, Hawaii, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of 2.5 km (1.6 miles) north of the community.[7] The reference coordinates are 22-00-00 NL and 159-21-00 WL. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, section 73.202(b) of the Rules,[8] as follows:

Community	Present	Proposed
Lihue, Hawaii	--------	292A

IV. PROCEDURAL MATTERS

4. *Showings Required*. Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). Petitioner or any party that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.[9]

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

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.[10]

(b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.[11]

6. *Comments and Reply Comments*. Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,[12] 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).[13]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
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[6] *See Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

[7] 47 CFR § 73.207.

[8] 47 CFR § 73.202(b).

[9] 47 CFR § 1.420(d).

[10] 47 CFR § 1.420(j).

[11] 47 CFR § 1.420(g)(2).

[12] 47 CFR §§ 1.415, 1.419, and 1.420.

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

filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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7. *Service.* Pursuant section 1.420 of the Rules,[15] all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.[16] Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Matthew K. Wesolowski, CEO
SSR Communications, Inc.
740 Highway 49 North, Suite R
Flora, MS 39071
matt@wyab.com

8. *Ex Parte Notices– Restricted*. The proceeding this Notice initiates shall be treated as a "restricted" proceeding in accordance with the Commission's *ex parte* rules.[17] For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.[18] An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.[19] However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.[20] Any comment that has not been served on the petitioner constitutes an *ex parte*

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

[15] 47 CFR § 1.420.

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

[17] 47 CFR §§ 1.1200 *et seq.*

[18] 47 CFR § 1.1208.

[19] 47 CFR § 1.1204(a)(10).

[20] 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing (continued….)

presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

9. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (http://apps.fcc.gov/ecfs/). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

10. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[21] do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.[22] This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.[23] 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.[24]

11. *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.

12. *Additional Information*. For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

[21] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[22] 47 CFR § 73.202(b).

[23] *See* 44 U.S.C. §§ 3501-3520.

[24] *See* 44 U.S.C. § 3506(c)(4).

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

In the Matter of	)	
	)	
Amendment of section 73.202(b), Table of	)	MB Docket No. 23-197
Allotments, FM Broadcast Stations (Puhi, Hawaii)	)	RM-11949
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 6, 2023 **Released: July 7, 2023**

Comment Date: August 28, 2023
Reply Comment Date: September 12, 2023

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a Petition for Rulemaking (Petition) filed by SSR Communications, Inc. (Petitioner), requesting the allotment of Channel 284A at Puhi, Hawaii, as the community's first local service. In compliance with the Commission's procedures,[1] Petitioner concurrently filed a construction permit application and paid the necessary filing fee.[2]

II. BACKGROUND

2. Petitioner states that Puhi, Hawaii would receive its first FM service, and Puhi possesses all of the requisite characteristics of a bona-fide community for the allotment purposes.[3] Puhi is a census designated place with a 2020 U.S. Census population of 3,380 persons. It has its own public charter school, community college, community cemetery, park, churches, and businesses that incorporate "Puhi" into their name, such as: Puhi Park Produce, Grove Farm Puhi Park, Puhi Building commercial office and Puhi Plaza Village shopping centers. Petitioner contends that, if Channel 284A at Puhi, Hawaii is allotted, it will participate in the FM auction process, and if it is the successful bidder, it will promptly construct and operate the proposed station in accordance with the Commission's rules and procedures.

III. DISCUSSION

3. We believe that the Petitioner's proposed change in the FM Table of Allotments warrants consideration under Priority (3), because it would provide a first local service at Puhi, Hawaii.[4] A staff engineering analysis indicates that Channel 284A can be allotted to Puhi, Hawaii, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 10.8 km

[1] *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14223, para. 18 (2006).

[2] *See* FCC File No. 0000214869 (filed May 16, 2023) (Application).

[3] Petition at 1.

[4] *See Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

(6.7 miles) west of the community.[5] The reference coordinates are 21-58-24 NL and 159-29-45 WL. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, section 73.202(b) of the Rules,[6] as follows:

Community	Present	Proposed
Puhi, Hawaii	----	284A

IV. PROCEDURAL MATTERS

4. *Showings Required*. Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). Petitioner or any party that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.[7]

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

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.[8]

(b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.[9]

6. *Comments and Reply Comments*. Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,[10] 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).[11]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications

[5] 47 CFR § 73.207.

[6] 47 CFR § 73.202(b).

[7] 47 CFR § 1.420(d).

[8] 47 CFR § 1.420(j).

[9] 47 CFR § 1.420(g)(2).

[10] 47 CFR §§ 1.415, 1.419, and 1.420.

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

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.
- Currently, the Commission does not accept 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. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.[12]

7. *Service.* Pursuant section 1.420 of the Rules,[13] all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.[14] Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Matthew K. Wesolowski, CEO
SSR Communications, Inc.
740 Highway 49 North, Suite R
Flora, MS 39071
matt@wyab.com

8. *Ex Parte Notices– Restricted*. The proceeding this Notice initiates shall be treated as a "restricted" proceeding in accordance with the Commission's *ex parte* rules.[15] For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court.[16] An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.[17] However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.[18] Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

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

[13] 47 CFR § 1.420.

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

[15] 47 CFR §§ 1.1200 *et seq.*

[16] 47 CFR § 1.1208.

[17] 47 CFR § 1.1204(a)(10).

[18] 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

9. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection via ECFS (http://apps.fcc.gov/ecfs/). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

10. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[19] do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.[20] This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.[21] 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.[22]

11. *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.

12. *Additional Information*. For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

[19] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[20] 47 CFR § 73.202(b).

[21] *See* 44 U.S.C. §§ 3501-3520.

[22] *See* 44 U.S.C. § 3506(c)(4).

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 23-593

Released: July 7, 2023

MEDIA BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS ACTION

FIRST QUARTER 2023 INFLATION ADJUSTMENT FIGURES FOR CABLE OPERATORS USING FCC RATE REGULATION FORM 1240 NOW AVAILABLE

This Public Notice is applicable to rate-regulated cable operators that use FCC Forms to justify their cable rates.[1] Cable operators adjusting the non-external cost portion of their rates for inflation should follow the instructions provided with the applicable FCC Form. All inflation adjustment figures are based on changes in the Gross National Product Price Index (GNP-PI) published by the United States Department of Commerce, Bureau of Economic Analysis (BEA). The chain-type price indexes were obtained from the BEA Table 1.7.4 (Price Indexes for Gross Domestic Product, Gross National Product, and Net National Product) Line 4 (Gross National Product) on June 29, 2023.[2]

Operators filing FCC Form 1240 may make an adjustment based on quarterly figures. The first quarter 2023 inflation factor for operators using FCC Form 1240 is 4.14%. The adjustment factor of 4.14% is a measure of the annualized change in prices occurring over the period from January 1, 2023 to March 31, 2023. The inflation adjustment factor is calculated by dividing the GNP-PI for the first quarter of 2023 (130.792) by the GNP-PI for the fourth quarter of 2022 (129.473). The result of this calculation is converted from a quarterly change measurement factor to an annual change measurement factor by raising it to the fourth power. We then convert the calculation to an inflation adjustment factor by subtracting one.

Operators calculating the Inflation Factor for a True-Up Period that includes some portion of the first quarter of 2023 should enter the inflation factor on the appropriate lines of Worksheet 1 of FCC Form 1240 as "0.0414." Operators using this factor for calculating the Projected Period Inflation Segment of FCC Form 1240 should enter this number on Line C3 (January 1996 version), or Line C5 (July 1996 version) as "1.0414."

Each quarter the Commission releases a quarterly inflation factor for use with FCC Form 1240. The following table lists these factors beginning in 2017.[3]

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[1] Pursuant to 47 CFR § 76.922(d)(2) and § 76.922(e)(2) of the Commission's rules, cable operators may adjust the non-external cost portion of their rates for inflation.

[2] Table 1.7.4 can be found at this link: https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJOSVBBX1RhYmxlX0xpc3QiLCI0MiJdXX0=.

[3] For pre-2017 inflation figures see DA 17-646, 32 FCC Rcd 5479 (rel. July 5, 2017), *available at* https://www.fcc.gov/general/inflation-updates-forms-1210-and-1240.

Year	Quarter	Dates Covered	Inflation Factor
2017	First	Jan. 1, 2017 – Mar. 31, 2017	1.96%
2017	Second	Apr. 1, 2017 – Jun. 30, 2017	1.01%
2017	Third	Jul. 1, 2017 – Sep. 30, 2017	2.09%
2017	Fourth	Oct. 1, 2017 – Dec. 31, 2017	2.33%
2018	First	Jan. 1, 2018 – Mar. 31, 2018	2.20%
2018	Second	Apr. 1, 2018 – Jun. 30, 2018	3.04%
2018	Third	Jul. 1, 2018 – Sep. 30, 2018	1.81%
2018	Fourth	Oct. 1, 2018 – Dec. 31, 2018	1.68%
2019	First	Jan. 1, 2019 – Mar. 31, 2019	0.90%
2019	Second	Apr. 1, 2019 – Jun. 30, 2019	2.42%
2019	Third	Jul. 1, 2019 – Sep. 30, 2019	1.81%
2019	Fourth	Oct. 1, 2019 – Dec. 31, 2019	1.28%
2020	First	Jan. 1, 2020 – Mar. 31, 2020	1.41%
2020	Second	Apr. 1, 2020 – Jun. 30, 2020	-1.82%
2020	Third	Jul. 1, 2020 – Sep. 30, 2020	3.51%
2020	Fourth	Oct. 1, 2020 – Dec. 31, 2020	2.04%
2021	First	Jan. 1, 2021 – Mar. 31, 2021	4.32%
2021	Second	Apr. 1, 2021 – Jun. 30, 2021	6.07%
2021	Third	Jul. 1, 2021 – Sep. 30, 2021	5.95%
2021	Fourth	Oct. 1, 2021 – Dec. 31, 2021	7.13%
2022	First	Jan. 1, 2022 – Mar. 31, 2022	8.19%
2022	Second	Apr. 1, 2022 – Jun. 30, 2022	9.00%
2022	Third	Jul. 1, 2022 – Sep. 30, 2022	4.37%
2022	Fourth	Oct. 1, 2022 – Dec. 31, 2022	3.88%
2023	First	Jan. 1, 2023 – Mar. 31, 2023	4.14%

The Commission releases a new quarterly inflation factor for operators using FCC Form 1240 four times each year. The inflation factor for a given quarter is usually released between three and four months after the end of the quarter, depending on the schedule of the Department of Commerce. The release of a new factor is posted on the Commission's Internet site at: https://www.fcc.gov/general/inflation-updates-forms-1210-and-1240.

For additional information, contact Jake Riehm, jake.riehm@fcc.gov, (202) 418-2166 or Kim Makuch, kim.makuch@fcc.gov, (202) 418-2252.

–FCC–

PUBLIC NOTICE

Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

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

DA 23-594
July 7, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 28 (EASTERN PENNSYLVANIA, SOUTHERN NEW JERSEY AND DELAWARE AREA) REGIONAL PLANNING COMMITTEES 700 MHZ AND 800 MHZ 2023 MEETINGS SCHEDULE

PR Docket No. 92-287 and WT Docket 02-378

The Region 28 (Delaware, Eastern Pennsylvania, and Southern New Jersey Area) Public Safety 700 MHz RPC and 800 MHz Regional Planning Committees (RPCs)[1] will hold their remaining 2023 quarterly meetings on the following dates. NOTE: These meetings are only being held remotely via MS Teams/phone bridge (info. recently updated).

Region 28 700 MHz and 800 MHz RPC Meetings Schedule for 2023

- Tuesday, July 11, 2023 10:00 a.m.
- Tuesday, October 10, 2023 10:00 a.m.

To participate:

Microsoft Teams meeting via this link
Meeting ID: 242 220 612 475
Passcode: yibwRa
Or call in (audio only): +1 323-792-6328, 420921184#
Phone Conference ID: 420 921 184#

The agenda for the meetings include:

- Call to Order - Roll Call & Introductions
- Approval of Minutes
- Chair Report
- Vice Chair Report
- Secretary Report
- Technical Report 700 & 800 MHz
- Regional State Interoperability Executive Committee Updates
- Old Business
- New Business
- Future Meeting Dates
- Adjourn

[1] The Region 28 (Delaware, Eastern Pennsylvania, Southern New Jersey) regional planning area includes the entire state of Delaware, the Pennsylvania counties of Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, Wyoming, and York, and the Southern New Jersey counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.

The Region 28 RPC 700 and 800 MHz meetings are open to the public. All eligible public safety providers whose sole purpose or principal purpose is to protect the safety of life, health, or property within Region 28 would utilize these frequencies. It is essential that not only public safety, but all government, Native American Tribal, and non-governmental organizations eligible under section 90.523 of the Commission's Rules be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not conversant with telecommunications technology should ensure that suitably conversant staff represent their respective agencies.

All interested parties wishing to participate in the planning for the use of the Public Safety spectrum in the 700 MHz and/or 800 MHz bands within Region 28 are encouraged to attend. For further information, please contact:

James Shelton – Region 28 Secretary, 700 & 800 MHz
V-COMM, LLC
736 Springdale Drive, Suite 300
Exton, PA 19341
Ph: 610-684-1000 x235
Fax: 484-879-6963
jim.shelton@vcomm-eng.com

- FCC -

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 23-595
Released: July 10, 2023

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES COMMENT DATES FOR CALL BLOCKING NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY
CG Docket No. 17-59

Comment Date: August 9, 2023
Reply Comment Date: September 8, 2023

On May 19, 2023 the Federal Communications Commission released an Eighth Further Notice of Proposed Rulemaking and Third Notice of Inquiry in CG Docket 17-59, *Advanced Methods to Target and Eliminate Unlawful Robocalls*.[1] The Eighth Further Notice seeks comment on several additional steps that could ensure all consumers have access to call blocking solutions, restore trust in caller ID, and hold voice service providers responsible for illegal traffic. The Third Notice of Inquiry seeks information regarding the current state of technology for identifying and combating illegal calls, as well as the current state of call labeling. The Eighth Further Notice of Proposed Rulemaking and Third Notice of Inquiry set deadlines for filing comments and reply comments at 30 days and 60 days after publication in the Federal Register.

On July 10, 2023, the Federal Register published a summary of the Eighth Further Notice of Proposed Rulemaking and Third Notice of Inquiry.[2] Accordingly, comments are due August 9, 2023, and reply comments are due September 8, 2023. Complete comment filing instructions are set forth in the Further Notice of Proposed Rulemaking and Notice of Inquiry, as well as the Federal Register.

For further information, contact Jerusha Burnett, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418-0526 or jerusha.burnett@fcc.gov.

[1] *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, 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, & Third Notice of Inquiry in CG Docket 17-59, FCC 23-37 (rel. May 19, 2023).

[2] Federal Communications Commission, Advanced Methods to Target and Eliminate Unlawful Robocalls, 88 FR 43489 (Jul. 10, 2023).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-596
Released: July 10, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DATES FOR THE NOTICE OF PROPOSED RULEMAKING ON FACILITATING IMPLEMENTATION OF NEXT GENERATION 911 SERVICES (NG911)

PS Docket No. 21-479

Comments Due: August 9, 2023
Reply Comments Due: September 8, 2023

On June 9, 2023, the Federal Communications Commission released a *Notice of Proposed Rulemaking* (*Notice*) seeking comment on proposed rules to advance the nationwide transition to Next Generation 911 (NG911).[1]

The *Notice* set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after publication of a summary of the *Notice* in the Federal Register.[2] On July 10, 2023, the Office of the Federal Register published a summary of the *Notice*, including the associated comment and reply comment dates.[3] Accordingly, comments must be filed on or before August 9, 2023, and reply comments must be filed on or before September 8, 2023. The *Notice* contains the comment filing instructions.[4]

For further information, contact Rachel Wehr, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-1138 or Rachel.Wehr@fcc.gov, or Brenda Boykin, Deputy Division Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-2062 or Brenda.Boykin@fcc.gov.

--FCC--

[1] *Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, FCC 23-47, 2023 WL 3946685 (June 8, 2023), https://www.fcc.gov/document/fcc-proposes-action-expedite-transition-next-generation-911-0 (*Notice*).

[2] *Notice* at *1.

[3] *See* 88 Fed. Reg. 43514 (July 10, 2023).

[4] *Notice* at *31, para. 80.

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

In the Matter of	)	
	)	
Application of William O'Shaughnessy	)	
(Deceased), Transferor	)	
	)	
and	)	NAL/Acct. No. MB-202341410013
	)	
The Kate O'Shaughnessy Nulty Trust and the	)	
David Tucker O'Shaughnessy Trust II, Transferees	)	
	)	
For Consent to Transfer Control of Hudson-	)	FRN: 0004284147
Westchester Radio, Inc., Licensee of Stations	)	
WVOX(AM), New Rochelle, New York,	)	Facility ID Nos. 28024, 28023, and 201735
WVIP(FM), New Rochelle, New York, and	)	File No. 0000202818 et al.
W252DX, White Plains, New York	)	

ORDER

Adopted: July 11, 2023 **Released: July 11, 2023**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Hudson-Westchester Radio, Inc. (HWR), licensee of stations WVOX(AM), New Rochelle, New York; WVIP(FM), New Rochelle, New York; and W252DX, White Plains, New York. The Consent Decree resolves issues arising from the Bureau's review of the captioned application (Application) for Commission consent to transfer of control of HWR.

2. In the course of processing the Application, the Bureau staff found that an unauthorized transfer of control occurred more than four months before HWR filed the Application. Pursuant to the terms of the Consent Decree, HWR stipulates that it violated section 310 of the Communications Act of 1934, as amended (the Act),[1] and sections 73.3540 of the Commission's rules (Rules).[2] The Consent Decree requires, among other things, that HWR make an eight thousand dollar ($8,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Act and the Rules in connection with the Application. Based on the record before us, we conclude that nothing in the record creates a substantial and material question of fact as to whether HWR possesses the basic qualifications to be a Commission licensee.

4. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,[3] and by the

[1] 47 U.S.C. § 310.

[2] 47 CFR § 73.3540.

[3] 47 U.S.C. § 4(i).

authority delegated by sections 0.61 and 0.283 of the Rules,[4] the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

6. IT IS FURTHER ORDERED that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Hudson-Westchester Radio, Inc., c/o Melodie A. Virtue, Esq., 1000 Potomac Street, NW, Suite 200, Washington, DC 20007.

7. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,[5] a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in each of the above-captioned stations' online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[4] 47 CFR §§ 0.61, 0.283.

[5] *Id.* § 73.3526(e)(10).

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

In the Matter of	)	
	)	
Application of William O'Shaughnessy	)	
(Deceased), Transferor	)	
	)	
and	)	NAL/Acct. No. MB-202341410013
	)	
The Kate O'Shaughnessy Nulty Trust and the	)	
David Tucker O'Shaughnessy Trust II, Transferees	)	
	)	
For Consent to Transfer Control of Hudson-	)	FRN: 0004284147
Westchester Radio, Inc., Licensee of Stations	)	
WVOX(AM), New Rochelle, New York,	)	Facility ID Nos. 28024, 28023, and 201735
WVIP(FM), New Rochelle, New York, and	)	File No. 0000202818 et al.
W252DX, White Plains, New York	)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) and Hudson-Westchester Radio, Inc. (HWR), licensee of stations WVOX(AM), New Rochelle, New York; WVIP(FM), New Rochelle, New York; and W252DX, White Plains, New York, for the purpose of terminating the Bureau's investigation of HWR's compliance with section 310(d) of the Communications Act of 1934, as amended,[1] and section 73.3540 of the Commission's rules.[2]

II. DEFINITIONS

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

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

(b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;

(c) "Application" means the application of HWR for FCC consent to a non pro forma transfer of control, application file no. 0000202818 et al.;

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

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

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

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

[1] 47 U.S.C. § 310(d).

[2] 47 CFR § 73.3540.

(h) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;

(i) "HWR" means Hudson-Westchester Radio, Inc.;

(j) "Investigation" means the Bureau's investigation of information contained in the Application, as discussed herein;

(k) "Licenses" refers to the license authorizations for stations WVOX(AM), New Rochelle, New York (Fac. ID No. 28024); WVIP(FM), New Rochelle, New York (Fac. ID No. 28023); and W252DX, White Plains, New York (Fac. ID No. 201735);

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

(m) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations; and

(n) "Violations" means the unauthorized transfers of control of HWR in violation of section 310(d) of the Act and section 73.3540 of the Rules.

III. BACKGROUND

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

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[3]

Section 73.3540 of the Rules implements section 310(d) of the Act.[4] It is well-settled that "control" as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission.[5]

4. William O'Shaughnessy held 55% of HWR's issued and outstanding voting stock. On March 3, 2022, HWR issued his shares in the name of the William O'Shaughnessy Revocable Trust (WSOR Trust).[6] William O'Shaughnessy then resigned as trustee of the WSOR Trust effective March 4, 2022, and in accordance with the terms of the trust, his son, David O'Shaughnessy, succeeded him as trustee of the WSOR Trust.[7]

[3] 47 U.S.C. § 310(d).

[4] 47 CFR § 73.3540.

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

[6] William O'Shaughnessy was the grantor and the initial trustee (until his resignation, effective March 4, 2022) of the WSOR Trust. Application Attach., Trust Agreement. The beneficiaries of the WSOR Trust are the David Tucker O'Shaughnessy Trust II and the Kate O'Shaughnessy Nulty Trust. Application Attach., Description of Transaction.

[7] Application Attach., David O'Shaughnessy Appointment as Trustee.

5. William O'Shaughnessy died on May 28, 2022.[8] Upon his death, the WSOR Trust agreement provides that half of the shares of HWR's voting stock held in the trust shall be distributed to the David Tucker O'Shaughnessy Trust II (DTOS Trust II) and the other half to the Kate O'Shaughnessy Nulty Trust (KOSN Trust).[9] The proposed distribution of shares from the WSOR Trust will result in the DTOS Trust II and the KOSN Trust holding 37.5% and 42.5%, respectively, of the issued and outstanding HWR voting stock.[10] The David Tucker O'Shaughnessy Trust (DTOS Trust I) will continue to hold the remaining 20% of the issued and outstanding HWR voting stock.[11] Thus, as a result of the proposed distribution of shares from the WSOR Trust, David Tucker O'Shaughnessy will hold a total voting interest of 57.5% in HWR through the DTOS Trust I and the DTOS Trust II.[12]

6. On July 7, 2022, HWR filed an application for an involuntary pro forma transfer of control of HWR from William O'Shaughnessy (deceased) to the William O'Shaughnessy Irrevocable Trust.[13] Subsequently, at the request of the Bureau staff, HWR filed a non pro forma transfer of control application (the Application) seeking Commission consent for the transfer to the WSOR Trust and withdrew the involuntary pro forma transfer application.[14]

7. The Application seeks FCC consent for the voluntary transfer of HWR voting stock from William O'Shaughnessy to the WSOR Trust, which occurred without prior FCC authorization on March 3, 2022, as discussed above. The Application also seeks FCC consent for the unauthorized transfer of control that resulted from the appointment of David Tucker O'Shaughnessy as the successor trustee of the WSOR Trust on March 4, 2022. Additionally, the Application seeks consent for the proposed distribution of the HWR voting stock from the WSOR Trust to the DTOS Trust II and the KOSN Trust.

8. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. AGREEMENT

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

10. **Jurisdiction**. HWR acknowledges that the Bureau has jurisdiction over it and the matters contained in this Consent Decree, and the authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. HWR agrees

[8] Application Attach., Description of Transaction.

[9] Application Attach., Trust Agreement.

[10] The DTOS Trust II and the KOSN Trust currently hold 10% and 15%, respectively, of the issued and outstanding HWR voting stock. Application Attach., Description of Transaction.

[11] Application, Changes In Interest.

[12] *Id.*

[13] Application Attach., Description of Transaction; *see also Broadcast Applications*, Public Notice, Report No. PN-1-220712-01, at 1, 3, 7 (MB July 12, 2022) (accepting pro forma transfer application for filing).

[14] Application Attach., Description of Transaction. We dismissed the pro forma transfer of control application on December 1, 2022. *Broadcast Actions*, Public Notice, Report No. PN-2-221205-01, at 2-3 (MB Dec. 5, 2022). *See also Broadcast Applications*, Public Notice, Report No. PN-1-220712-01, at 1, 3, 7 (MB July 12, 2022) (accepting the Application for filing).

that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

12. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, HWR agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against HWR, provided that HWR satisfies all of its obligations under this Consent Decree. In the event that HWR fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

13. **Admission of Liability**. HWR stipulates that the actions described in paragraph 4 of this Consent Decree violated section 310(d) of the Act and section 73.3540 of the Rules.

14. **Civil Penalty**. HWR agrees to make the Civil Penalty payment to the United States Treasury in the amount of eight thousand dollars ($8,000), within thirty (30) calendar days of the Effective Date. HWR acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[15]

15. **Payment**. HWR shall send electronic notification of payment to Christopher Clark at Christopher.Clark@fcc.gov on the date payment is made. Payment shall be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[16] or by wire transfer. The Commission no longer accepts civil penalty or forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[17]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at (202) 418-2843 or emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[18] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each

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

[16] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[17] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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

FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option.

- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

17. **Waivers**. HWR agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and HWR will waive any statutory right to a *trial de novo*. HWR further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[19] relating to the Consent Decree or Adopting Order.

18. **Severability**. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

20. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which HWR does not expressly consent), such provision will be superseded by such Rule or Order.

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

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

[19] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

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

24. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

25. **Authorized Representative**. Each Party represents and warrants to the other Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

HUDSON-WESTCHESTER RADIO, INC.

By: _____
David T. O'Shaughnessy, President

Date: _____

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MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: 7/11/23

HUDSON-WESTCHESTER RADIO, INC.

By: _____
David T. O'Shaughnessy, President

Date: 7/10/23

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-598
Released: July 11, 2023

REMINDER THAT REVISED TRS FUND CONTRIBUTION RULES APPLY BEGINNING JULY 1, 2023

CG Docket No. 03-123 and 10-51

The Consumer and Governmental Affairs Bureau reminds telecommunications carriers and Voice over Internet Protocol (VoIP) service providers that, beginning July 1, 2023, contributors to the Telecommunications Relay Services (TRS) Fund must pay a percentage of their *intrastate, interstate, and international* end-user revenues for support of all Internet-based forms of TRS—IP Captioned Telephone Service (IP CTS), IP Relay Service (IP Relay), and Video Relay Service (VRS).[1] The contribution factor for these payments is calculated as the ratio of IP CTS, VRS, and IP Relay funding requirements to the total *intrastate, interstate, and international* end-user revenues of all contributors for the prior calendar year.[2] For TRS Fund Year 2023-24, the contribution factor for support of Internet-based TRS is 0.01615.[3]

Contributions for support of interstate calls using other relay services—traditional TRS, Speech-to-Speech Relay Service, and Captioned Telephone Service—will continue to be paid as a percentage of contributors' *interstate and international* end user revenues, using a separate contribution factor.[4] For TRS Fund Year 2023-24, the contribution factor for these non-Internet-based relay services is 0.00025.[5]

Each TRS Fund contributor will receive a statement from the TRS Fund administrator indicating the required contribution amount.[6]

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

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[1] *See* 47 CFR § 64.604(c)(5)(iii)(A); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*; *Misuse of Internet Protocol Relay Service*, CG Docket Nos. 03-123, 10-51, and 13-24, FCC 22-49 (June 30, 2022) (*2022 VRS and IP Relay Contribution Base Order*) (including intrastate revenues in the contribution base for support of VRS and IP Relay, beginning July 1, 2023); *Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 13-24 and 03-123, Report and Order, 34 FCC Rcd 11265, 11268-70, paras. 7-12 (2019) (*2019 IP CTS Contribution Base Order*) (including intrastate revenues in the contribution base for support of IP CTS, beginning July 1, 2020).

[2] 47 CFR § 64.604(c)(5)(iii)(B).

[3] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03-123 and 10-51, Order, DA 23-577, at 9, para. 26 (CGB June 30, 2023) (*2023 TRS Funding Order*).

[4] *2022 VRS and IP Relay Contribution Base Order* at 6-7, para. 16 n.48.

[5] *2023 TRS Funding Order* at 9, para. 26.

[6] 47 CFR § 64.604(c)(5)(iii)(B).

For further information, please contact Michael Scott at (202) 418-1264 or by e-mail at Michael.Scott@fcc.gov.

-FCC-

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

In the Matter of	)	
	)	
Custer County	)	Facility ID Nos. 14767, 14768
	)	NAL/Acct. No. 202341420023
Licensee of Stations K09DY-D and K07BW-D,	)	FRN: 0013722426
Westcliffe, Colorado	)	LMS File No. 0000179479

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 11, 2023 **Released: July 11, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)[1] of Custer County (Licensee), for renewal of its licenses for K09DY-D and K07BW-D, Westcliffe, Colorado (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[2] by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of three thousand dollars ($3,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[3] The application for renewal of the Stations' licenses should have been filed by December 1, 2021, the first day of the fourth full calendar month prior to the Stations' license expiration date of April 1, 2021.[4] However, the Licensee did not file the Application until January 10, 2021. In an attachment to the Application, the Licensee states that the failure to timely file was inadvertent and "[d]ue to changing personnel in the County".

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $3,000. In this case, the Licensee failed to file the Application on or before December 1, 2021,

[1] Application of Custer County for Renewal of License, LMS File No. 0000179479 (filed Jan. 10, 2022). K09DY-D and K07BW-D are each television translators. In this case, the Licensee filed for the joint renewal of the licenses of the Stations in a single renewal application.

[2] 47 CFR § 73.3539(a).

[3] *Id*.

[4] *See* 47 CFR §§ 73.1020, 73.3539(a); *See Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

as required by section 73.3539(a) of the Rules.[5] The Application was not received until January 10, 2022, over one month late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (the Act), a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[6] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[7] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[8] and the Commission has so interpreted the term in the section 503(b) context.[9] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[10]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form or information.[11] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[12]

6. In this case, the Licensee failed to timely file a license renewal application for two (2) stations, as required by section 73.3539(a) of the Rules.[13] The Licensee indicates that the failure to timely file the Application was inadvertent and "[d]ue to changing personnel in the County". We note that inadvertence is, at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."[14] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[15] we will reduce the forfeiture from the base amount to $1,500 per station for the failure to file a timely renewal application, because, as television translators, the Stations are providing a secondary service.[16] Furthermore, as translators, the Stations are not originating

[5] 47 CFR § 73.3539(a).

[6] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[7] 47 U.S.C. § 312(f)(1).

[8] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[9] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[10] 47 U.S.C. § 312(f)(2).

[11] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), para. (b)(10), Table 1.

[12] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), para. (b)(10), Table 3.

[13] 47 CFR § 73.3539(a).

[14] *Southern California*, 6 FCC Rcd at 4387, para. 3.

[15] *Supra* note 12.

[16] *See*, *e.g.*, *FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power*

(continued….)

programing, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application included two (2) stations the total proposed forfeiture amount is $3,000.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[17] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[18] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[19]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[20] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[21] Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[22] and sections 1.80 and 0.283(d) of the Commission's rules,[23] that Custer County, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars ($3,000)** for its apparent willful violation of section 73.3539(a) of the Commission's rules.[24]

Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations… Stations in the low power television service are authorized with 'secondary' frequency use status.").

[17] 47 U.S.C. § 309(k).

[18] 47 U.S.C. § 309(k)(1).

[19] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[20] 47 CFR § 73.3539(a).

[21] For example, we do not find here that the Licensee's operation of the Stations "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc*., Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[22] 47 U.S.C. § 503(b).

[23] 47 CFR §§ 1.80 and 0.283.

[24] 47 CFR § 73.3539(a).

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,[25] within thirty (30) days of the release date of this *NAL*, Custer County, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[26] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[27]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[28] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, 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.

[25] 47 CFR § 1.80.

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

[27] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[29] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[30] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[31]

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[32]

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Custer County, 205 S. 6th Street, Westcliffe, Colorado 81252. A copy shall also be sent to the Stations' consultant, Susan Hansen, by electronic mail to stcl@comcast.net.

[29] *See* 47 CFR § 1.1914.

[30] 47 CFR §§ 1.16 and 1.80(g)(3).

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

[32] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

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 23-600
Released: July 12, 2023

MEDIA BUREAU ANNOUNCES TRANSITION OF ADDITIONAL FILINGS TO LICENSING AND MANAGEMENT SYSTEM

The Media Bureau is pleased to announce the completion of the transition of Media Bureau filings and electronic records from the Consolidated Database System (CDBS) to the Licensing and Management System (LMS). Commencing July 26, 2023, the public must submit through LMS the following filings that were previously submitted using CDBS or a paper form:

- Application for Construction Permit for AM Broadcast Station
- Application for AM Broadcast Station License
- Application for Direct Measurement of AM Broadcast Station
- AM Engineering Special Temporary Authorization (STA)
- Extension of AM Engineering STA
- Application for Construction Permit for New Class D Noncommercial Educational FM Broadcast Station[1]
- Application for Construction Permit for New Low Power FM Station
- Equipment Test Authority Notification
- Program Test Authority Notification
- Restoration of Licensed Operation

Additional information about the LMS system and all filings LMS currently supports can be found at the Media Bureau's LMS Help Center at https://www.fcc.gov/media/radio/lms-help-center.

In a January 11, 2022 Public Notice,[2] the Media Bureau announced that CDBS would no longer accept new filings and established a temporary system for email submission of certain filings that could not be submitted using LMS at that time. Effective July 26, 2023, the public must use LMS to submit those filings, and the Media Bureau will terminate the audiofilings@fcc.gov email account. The Media Bureau will dismiss as procedurally defective any filings submitted via email or otherwise submitted outside LMS.

We note that the LMS system does not list filings using schedule numbers. Rather, filings are identified by their purpose, such as "Minor Modification of Construction Permit." The public should consult the Audio Division's LMS Help Center, https://www.fcc.gov/media/radio/lms-help-center, which includes detailed information about how to select the proper filing in LMS.

[1] New Class D FM applications may only be filed for stations in the state of Alaska. New Class D stations are not permitted in any other location.

[2] *See Media Bureau Announces New Procedures for All Filings Currently Submitted in the Consolidated Database System (CDBS)*, Public Notice, DA 22-29 (MB Jan. 11, 2022).

LMS procedures. Applicants may log into the LMS system at: https://enterpriseefiling.fcc.gov/dataentry/login.html.

Applicants must log into LMS using an FCC Registration Number (FRN) and associated FRN password. Unlike the CDBS system, all filings in LMS are tied to a facility's FRN. For details on how to submit the filings included in this Public Notice, please refer to the Help Center page at https://www.fcc.gov/media/radio/lms-help-center, and then select the link for the type of application you intend to file.

LMS Public Search. Effective July 25, 2023, all pertinent information from CDBS will have been transferred to LMS and will be accessible using LMS. Persons seeking information regarding broadcast applications filed in CDBS or LMS should search LMS. However, CDBS records will remain available to the public for a limited period of time. The public is encouraged to contact the Audio Division if records from CDBS do not appear in LMS.

For further information contact James Bradshaw, Audio Division, Media Bureau, james.bradshaw@fcc.gov; Jerome Manarchuck, Audio Division, Media Bureau, jerome.manarchuck@fcc.gov or Albert Shuldiner, Audio Division, Media Bureau, albert.shuldiner@fcc.gov. Press inquiries should be directed to Janice Wise, janice.wise@fcc.gov, at (202) 418-8165.

– FCC –

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 23-601
Released: July 13, 2023

WIRELESS TELECOMMUNICATIONS BUREAU ESTABLISHES WT DOCKET NO. 23-232

WT Docket No. 23-232

By this Public Notice, the Wireless Telecommunications Bureau establishes WT Docket No. 23-232, which is captioned, "Advancing Understanding of Non-Federal Spectrum Usage."

This commences an exempt proceeding under the Commission's *ex parte* rules. *See* 47 CFR §§ 1.1200(a), 1.1204(b). *Ex parte* presentations are permitted and need not be disclosed, except during a Sunshine Agenda period. *See* 47 CFR § 1.1203(a). Participants in this proceeding may choose to submit written *ex parte* presentations or written summaries of oral *ex parte* presentations in the record.

Action by Chief, Wireless Telecommunications Bureau.

PUBLIC NOTICE

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

News media information 202-418-0500
Internet: http://www.fcc.gov (or ftp.fcc.gov)
TTY (202) 418-2555

DA No. 23-602

Report No. SAT-01742 **Friday July 14, 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-20230310-00051 E Space Exploration Holdings, LLC
Special Temporary Authority
Grant of Authority Effective Date: 07/13/2023

On July 13, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Space Exploration Holdings, LLC (SpaceX) for special temporary authority for a period of 180 days to permit communications between SpaceX satellites and certain earth stations in the United States at elevations of no less than ten degrees. Specifically, SpaceX is authorized to temporarily adjust the minimum elevation angle from 25 degrees to ten degrees at latitudes above 53 degrees for communications in the 10.7-12.7 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

SAT-STA-20230530-00126 E Iridium Constellation LLC
Special Temporary Authority
Grant of Authority Effective Date: 07/14/2023

On July 14, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Iridium Constellation LLC for 30 days to maintain five earlier launched 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-20230606-00132 E S3033 Sirius XM Radio Inc.
Special Temporary Authority
Grant of Authority Effective Date: 07/10/2023

On July 10, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Sirius XM Radio Inc., for a period of 14 days, to perform testing with its SXM-7 space station at the 85.15° W.L. orbital location using the 2348.0 MHz (space-to-Earth) Wireless Communications Service (WCS D Block) frequency and the 7025-7075 MHz (Earth-to-space) feeder link band.

SAT-STA-20230613-00139 E Iridium Constellation LLC
Special Temporary Authority
Grant of Authority Effective Date: 07/14/2023

On July 14, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Iridium Constellation LLC for an additional 30 days to maintain five newly launched 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-20230623-00146 E S2406 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 07/13/2023

On July 13, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 30 days, to operate Intelsat 902's C-band beam over new coverage areas in the fixed-satellite service using the 3625-4200 MHz (space-to-Earth) and 5850-6425 MHz (Earth-to-space) frequency bands at the 50.1° W.L. orbital location.

SAT-STA-20230706-00162 E S2804 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 07/10/2023

On July 10, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority, for a period of 60 days, for Intelsat License LLC to continue to operate the Intelsat 25 space station at the 31.5° W.L. orbital location.

CORRECTIONS

SAT-AMD-20230421-00093 S2179 EchoStar Satellite Services L.L.C.

The Satellite Licensing Division and Satellite Programs and Policy Division Information, Actions Taken, Public Notice SAT-01737, DA No. 23-570 (June 30, 2023) informative text regarding ICFS File No. SAT-AMD-20230421-00093, is corrected to specify the file number as SAT-AMD-20230616-00143.

The informative text regarding the above-captioned file number listed in Satellite Licensing Division and Satellite Programs and Policy Division Information, Actions Taken, Public Notice SAT-01737, DA No. 23-570 (June 30, 2023) is corrected to specify the file number as SAT-AMD-20230616-00143.

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

PUBLIC NOTICE

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

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

DA 23-603
Released: July 14, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF ALTEVA OF WARWICK LLC TO ARCHTOP FIBER LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-178

Comments Due: July 28, 2023
Reply Comment Due: August 4, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by MBS Intermediate Holdings, LLC (MBS) and Archtop Fiber L.L.C. (Archtop) (together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of MBS' indirect subsidiary, Alteva of Warwick LLC (f/k/a Warwick Valley Telephone Company) (Warwick), from MBS to Archtop.[2]

Warwick is a wholly-owned subsidiary of Alteva, Inc. (Alteva), both New York cooperations.[3] Alteva, in turn, is directly owned and controlled by MBS, a Delaware limited liability company.[4] Warwick provides service as an incumbent local exchange carrier (LEC) in the Townships of Warwick, Goshen, and Wallkill in Orange County, New York, and in West Milford, Vernon, and Franklin Borough, New Jersey.[5] Warwick also provides competitive LEC services in Middleton and Scotchtown, New York and areas in New Jersey that are outside its incumbent LEC service territory.[6]

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

[2] Application of Warwick LLC, MBS Intermediate Holdings, LLC, and Archtop Fiber LLC for Consent to Transfer Control of Alteva of Warwick LLC Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-178 (filed May 26, 2023) (Application). Applicants also filed applications for the transfer of authorizations associated with international services. *See* IB File No. ITC-T/C-20230526-00068. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. We note that the transferee, Archtop, currently has two other pending transfer of control applications before the Commission. *See Domestic Section 214 Applications Filed for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC and Hancock Telephone Company, Inc. to Archtop Fiber LLC*; WC Docket Nos. 22-421 and 23-178, Public Notice, DA 23-147 (rel. Feb. 24, 2023).

[3] Application at 2; Exh. B (Pre-Close Ownership Structure) at 1.

[4] *Id.* at 3; Exh. B at 1.

[5] *Id.* at 2.

Archtop, a Delaware limited liability company, does not currently provide any telecommunications services.[7] Archtop is indirectly owned (98.7% voting and equity) by Post Road Digital Infrastructure Fund I LLC, which, in turn, is wholly-owned by Post Road Digital Infrastructure Fund I, LP (Post Road), both Delaware entities.[8] The voting interest in Post Road is held by Post Road DIF I GP LLC (Post Road DIF GP) (50.5%), a Delaware entity, and OPTrust Infrastructure Direct N.A. VII Inc. (OP Trust Infrastructure) (49.5%), a Canadian entity.[9] Post Road DIF GP is indirectly owned (100% voting and 80% equity) by Post Road Group Holdings LP (PRG Holdings), a Delaware entity that is ultimately owned and controlled by Michael Bogdan and Kevin Davis, both U.S. citizens.[10]

Pursuant to the terms of the proposed transaction, Archtop will acquire all of the equity and voting interest in Alteva and, therefore, indirectly acquire all of the equity and voting rights in Warwick.[11]

The Applicants assert that the proposed transaction is in the public interest.[12] They state that Archtop plans to invest millions of dollars over the next five years to become a new broadband leader in its region and that Archtop's current all-fiber network will deliver gigabit-plus speeds.[13] They further state that "[c]ustomers' rates, terms, and conditions of service will not change except in compliance with customers' contracts, tariffs, and applicable law."[14]

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[6] *Id.*

[7] *Id.* at 11. While Archtop does not currently provide domestic telecommunications services, it has two transfer of control applications pending before the Commission. *See supra* note [2]. Applicants state that "[t]o the best of Applicants' knowledge, none of the entities [related to the two pending 214 transactions] provide local exchange or interexchange services in the same geographic market as Warwick." *Id.* at 21.

[8] Application at 12: Exh. C (Post-Closing Ownership Chart) at 2.

[9] Application at 12-13 and Exh. C at 2. The OPSEU Pension Plan Trust Fund (OPSEU Pension Plan), a Canadian entity, wholly owns OP Trust Infrastructure. Application at 13 and Exh. C at 2. The OPSEU Pension Plan holds an approximately 10.5% indirect interest in Dobson Technologies, Inc. d/b/a Dobson Fiber, an interstate telecommunications carrier offering services in Arkansas, Oklahoma, and Texas. Application at 20. Dobson Fiber wholly owns the following subsidiaries: Dobson Telephone Company, Inc., (DTC), Dobson Technologies – Transport and Telecom Solutions, LLC, Lavaca Telephone Company, Inc. (Lavaca), Pinnacle Telecom L.L.C., and Vantage Telecom, LLC. *Id.* DTC provides service as an incumbent LEC and eligible telecommunications carrier (ETC) to approximately 5,200 access lines in western and eastern Oklahoma. *Id.* at n. 21 (citing *214 Application Granted Subject To Condition*, WC Docket No. 22-10, Public Notice, DA 22-1092, at n.4 (rel. Oct. 13, *2022*)). Lavaca provides service as an incumbent LEC and ETC to about 1,800 access lines in rural western Arkansas and rural eastern Oklahoma. *Id.*

[10] Application at 14-15 and Exh. C at 1. The general partner for PRG Holdings is Post Road Group GP LLC (Post Road GP), a Delaware entity. Application at 14 and Exh. C at 1. Post Road GP holds all the voting general partner interest in PRG Holdings. *Id.* Michael Bogdan holds all the voting and equity interest in Birch Hill Capital LLC, a Delaware entity, which, in turn, holds 50% voting and equity in Post Road GP and 45% of the equity of PRG Holdings. Application at 14-15. Kevin Davis holds all the interest in Seventh Avenue Capital Group LLC (Seventh Avenue) and Seventh Avenue Capital Group II LLC (Seventh Avenue II), both Delaware entities. *Id*. at 14. Seventh Avenue holds 50% of the voting and equity interest in Post Road GP, while Seventh Avenue II holds 45% of the equity in PRG Holdings. *Id.*

[11] Application at 4-5.

[12] *Id.* at 5-9.

[13] *Id.* at 6-8.

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

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

Domestic Section 214 Application Filed for the Transfer of Control of Alteva of Warwick LLC to Archtop Fiber LLC, WC Docket No. 23-178 (filed May 30, 2023).

Referral to Executive Branch Agencies

Through this Public Notice, pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20230526-00068, are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.[16]

GENERAL INFORMATION

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

Interested parties may file comments **on or before July 28, 2023**, and reply comments **on or before August 4, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at http://apps.fcc.gov/ecfs/ .
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
    - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[17] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S.

[15] 47 CFR § 63.03(c)(1)(v).

[16] 47 CFR § 1.40001. *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), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

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

Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

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

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

1) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
2) David Krech, International Bureau, david.krech@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov

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

To allow the Commission to consider fully all substantive issues regarding the applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[18] A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1191, or David Krech, Telecommunications and Analysis Division, International Bureau, at (202) 418-7443.

-FCC-

[18] *See* 47 CFR § 1.45(c).

Federal Communications Commission
Washington, D.C. 20554

July 14, 2023

DA 23-604
In Reply Refer to:
1800B3-ATS
Released: **July 14, 2023**

Eastern New Mexico University
c/o Ernest T Sanchez, Esq.
1629 K Street NW, Suite 300
Washington, DC 20006
(sent by email to: ernestsanchez2348@gmail.com)

New Mexico Junior College
c/o F. Scott Pippin, Esq.
Lerman Senter PLLC
2001 L Street NW, Suite 400
Washington, DC 20036
(sent by email to: spippin@lermansenter.com)

New Hope Baptist Church – Hobbs
c/o Jason Perry
1711 W Centre Ave
Artesia, NM 99210
(sent by email to: nhbcartesia@gmail.com)

Christian Ministries of the Valley, Inc.
c/o Enrique Garza
PO Box 1290
Weslaco, TX 78599
(sent by email to: egarza@radiovida.com)

Christian Television Radio Ministry
c/o David Chavez
3204 Travis Ave.
Midland, TX 79701
(sent by email to: txdavid@msn.com)

Teleamerica Communications West Palm Beach Corp.
c/o Dan Alpert, Esq.
2120 21st Road N
Arlington, VA 22201
(sent by email to dja@commlaw.tv)

Hispanic American Christian Network, Inc.
c/o Dan Alpert, Esq.
2120 21st Road N
Arlington, VA 22201
(sent by email to dja@commlaw.tv)

In re: **NCE MX Group 158**

Eastern New Mexico University
New NCE FM, Hobbs, New Mexico
Facility ID No. 767225
Application File No. 0000166693

New Mexico Junior College
New NCE FM, Hobbs, New Mexico
Facility ID No. 768959
Application File No. 0000167689

New Hope Baptist Church - Hobbs
New NCE FM, Hobbs, New Mexico
Facility ID No. 768311
Application File No. 0000167507

Christian Ministries of the Valley, Inc.
New NCE FM, Hobbs, New Mexico
Facility ID No. 762634
Application File No. 0000166726

Christian Television Radio Ministry
New NCE FM, Andrews, Texas
Facility ID No. 767954
Application File No. 0000167642

Teleamerica Communications West Palm Beach Corp.
New NCE FM, Kermit, Texas
Facility ID No. 768222
Application File No. 0000167808

Hispanic American Christian Network, Inc.
New NCE FM, Wink, Texas
Facility ID No. 765730
Application File No. 0000167156

Dear Counsel and Applicants:

The Media Bureau (Bureau) has before it seven mutually exclusive applications for construction permits for new noncommercial educational (NCE) FM stations, proposing service to different communities in New Mexico and Texas. New Mexico Junior College (NMJC), New Hope Baptist Church – Hobbs (NHBH), Christian Ministries of the Valley, Inc. (CMVI), and Eastern New Mexico University (ENMU) each proposes to serve Hobbs, New Mexico.[1] 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.[2] The Bureau identified these applications, along with the application of City Of Hobbs, New Mexico (CHN),[3] as NCE MX Group 158.[4]

In the *Fourth Comparative Order*,[5] the Commission for the second time identified the CHN Application as the tentative selectee of NCE MX Group 158.[6] However, CHN subsequently withdrew its application, and the Bureau dismissed it on July 10, 2023.[7] Based on the analysis conducted by the Commission in the *Fourth Comparative Order*, ENMU is the applicant with the next best comparative position in Group 158—only ENMU and CMVI proceeded to a points system analysis, where ENMU was credited with three points and CMVI was not credited with any points.[8] We thus name ENMU the new tentative selectee in Group 158, and accept the ENMU Application for filing.[9]

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[1] Application File Nos. 0000167689 (NMJC Application), 0000167507 (NHBH Application), 0000166726 (CMVI Application), and 0000166693 (ENMU Application).

[2] Application File Nos. 0000167642 (CTRM Application), 0000167808 (TCWP Application), and 0000167156 (HACN Application).

[3] Application File No. 0000167470 (CHN Application).

[4] *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).

[5] *See Comparative Consideration of 10 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations,* Memorandum Opinion and Order, FCC 23-45 at 11-12, paras. 28-30 (Jun. 5, 2023) (*Fourth Comparative Order*).

[6] Group 158 was analyzed in a previous point system order, and CHN was designated the tentative selectee. *See 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 at 21-22, paras.73-74 (Aug. 2, 2022) (*First Comparative Order*). On September 1, 2022, CHN filed an amendment to withdraw its claim for diversity of ownership points and forfeit its tentative selectee status. *See* CHN Application, Amendment (filed Sep. 1, 2022). The Commission therefore re-analyzed Group 158 in light of this amendment.

[7] *See Actions*, Public Notice, PN-2-230712-01 (July 12, 2023).

[8] *Fourth Comparative Order* at 11-12, paras. 28-30.

[9] 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 Fourth Comparative Order* at 28, para. 83 ("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

Accordingly, IT IS ORDERED THAT the application of Eastern New Mexico University (Application File No. 0000166693) 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 intend, by public notice, TO DISMISS the mutually exclusive applications of New Mexico Junior College (Application File No. 0000167689), New Hope Baptist Church – Hobbs (Application File No. 0000167507), Christian Ministries of the Valley, Inc. (Application File No. 0000166726), Christian Television Radio Ministry (Application File No. 0000167642), Teleamerica Communications West Palm Beach Corp. (Application File No. 0000167808), and Hispanic American Christian Network, Inc. (Application File No. 0000167156), and TO GRANT the application of Eastern New Mexico University (Application File No. 0000166693) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which 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.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc:

Duane Ryan, Contact Representative for Eastern New Mexico University
(sent my email to: duane.ryan@enmu.edu)

Steve McCleery, Contact Representative for New Mexico Junior College
(sent by email to: gcavanaugh@nmjc.edu)

Gloria Quintero, Contact Representative for Teleamerica Communications West Palm Beach Corp.
(sent by email to: quintero.norman@yahoo.com)

Maria C. Guel, Contact Representative for Hispanic American Christian Network, Inc.
(sent by email to: mcguel@mekaddeshgroup.com)

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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 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)).

Federal Communications Commission
Washington, D.C. 20554

July 14, 2023

DA 23-606
In Reply Refer to:
1800B3-CRC

CMG NY/Texas Radio, LLC
c/o Henry Wendel, Esq.
Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
hwendel@cooley.com

Radio One Licenses, LLC
c/o Sonya M. Hall-Harris
Urban One, Inc.
1010 Wayne Avenue, 14th Floor
Silver Spring, MD 20910
sharris@urban1.com

Sugarland Station Trust, LLC
c/o Joseph C. Chautin, III, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, LA 70471
jchautin@hardycarey.com

In re: **Application for Assignment of Licenses from CMG NY/Texas Radio, LLC, Assignor, to Radio One Licenses, LLC, Assignee**
KKBQ(FM), Pasadena, Texas, Fac. ID No. 23083
KHPT(FM), Conroe, Texas, Fac. ID No. 69564
KGLK(FM), Lake Jackson, Texas, Fac. ID No. 59951
File No. 0000213910 et al.

Application for Assignment of License from CMG NY/Texas Radio, LLC, Assignor, to Sugarland Station Trust, LLC, Assignee
KTHT(FM), Cleveland, Texas, Fac. ID No. 65308
File No. 0000213906

Application for Assignment of License from Radio One Licenses, LLC, Assignor, to Sugarland Station Trust, LLC, Assignee
KROI(FM), Seabrook, Texas, Fac. ID No. 35565
File No. 0000213907

Dear Counsel:

We have before us the above-captioned application for consent to an assignment of licenses from CMG NY/Texas Radio, LLC (CMG), to Radio One Licenses, LLC (Radio One). To facilitate compliance with the Local Radio Ownership Rule,[1] CMG and Radio One have each filed an application proposing an assignment of license to the Sugarland Station Trust, LLC (Sugarland Trust), a divestiture trust. Based on our review of the proposed transactions, we conditionally grant the assignment applications as discussed below.

Background. Radio One is a subsidiary of Urban One, Inc. (Urban One), which describes itself as one of the largest distributors of urban content and one of the largest minority-owned radio operators in the country.[2] Urban One seeks to expand its footprint in the Houston-Galveston, Texas metropolitan area (Houston Market), which it states is a top 10 U.S. radio market, by acquiring four local FM stations from CMG, a subsidiary of Cox Radio, Inc., for $27.5 million.[3] Urban One states that growing its presence in the Houston Market will allow it to better create and provide high-quality programming and improve service to its listeners.[4]

Urban One currently owns three commercial FM stations in the Houston Market.[5] Under the Local Radio Ownership Rule, a single person or entity may hold an attributable interest in no more than five commercial stations in the same service in the Houston Market, which includes 76 full-service, commercial and noncommercial radio stations, according to staff review of BIA's Media Access Pro database.[6] To comply with the Rule, Radio One seeks consent to assign two FM stations in Houston—KROI(FM) and KTHT(FM)—to the Sugarland Trust concurrent with its acquisition of CMG's Houston stations.[7] Thus, upon consummation of the proposed license assignments, Urban One would hold an attributable interest in five FM stations in the Houston radio market,[8] which is permitted under the Local Radio Ownership Rule.[9]

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[1] 47 CFR § 73.3555(a).

[2] Application File No. 0000213910, attachs., Description of Transaction at 1, Parties to the Application at 1.

[3] Application File No. 0000213910, attachs., Description of Transaction at 1, 3; Asset Purchase Agreement, recitals & art. 1. Under the terms of the proposed transactions, the license for KTHT(FM) would be acquired first by Radio One and then immediately assigned to the Sugarland Trust. *See* Application File No. 0000213910, attach., Description of Transaction at 1, n.2.

[4] Application File No. 0000213910, attach., Description of Transaction at 3.

[5] *See, e.g.*, Application File No. 0000213910, attach., Description of Transaction, exh. 1, BIA Houston Market Report; Application File No. 0000213910, attach., Urban One Authorizations.

[6] 47 CFR § 73.3555(a)(i) ("In a radio market with 45 or more full-power, commercial and noncommercial radio stations, [a person or single entity (or entities under common control) may have an attributable interest in] not more than 8 commercial radio stations in total and not more than 5 commercial stations in the same service (AM or FM).").

[7] Application File No. 0000213906, attach., Description of Transaction at 2 (citing *John H. Phipps, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 13053, 13056, para. 9 (1996)); Application File No. 0000213907, attachs., Comprehensive Exhibit at 2, Engagement Agreement (revised) § 3.

[8] Application File No. 0000213910, attach., Description of Transaction at 2.

[9] 47 CFR § 73.3555(a).

Urban One states that it has already entered into an agreement to sell KROI(FM) to a broadcaster that it says is a new entrant to the Houston Market and that it is actively engaged in discussions to sell KTHT(FM).[10] Under the terms of the Engagement and Assignment Agreement executed by Radio One and Sugarland Trust, the parties are required to enter into a Trust Agreement upon consummation of the transactions that will require Radio One to assign to the Sugarland Trust the rights and obligations of Radio One under any existing agreement to sell KROI(FM) and/or KTHT(FM) to an unaffiliated third party.[11] In addition, under the Trust Agreement the Sugarland Trust will be required to assume the rights and obligations of Radio One under any such existing sales agreement(s) for KROI(FM) and/or KTHT(FM).[12]

Discussion. The Commission reviews divestiture trusts [on] a case-by-case basis and considers their acceptability based on a totality of the circumstances."[13] Our review is informed by certain principles regarding trusts. First, "trusts are occasionally established specifically to effect compliance with the Commission's rules for holdings which would violate the rules if held outright."[14] Because of our concern that divestiture trusts present a "potential for abuse"[15] that can "pose unacceptable risks to competition,"[16] we have consistently found that insulated divestiture trusts "should be employed only where necessary, and then to as limited an extent as possible."[17] Here, Urban One, a current in-market owner and operator of FM radio stations, seeks to acquire and retain a net total of two additional FM stations in a top 10 market without diminishing the number of voices that serve the market.[18] Urban One states that it will continue compete fiercely with the more than 25 other radio voices that it says will remain in the Houston Market after consummation of the proposed transactions and required divestitures.[19] Urban One also commits to trying to sell KROI(FM) and KTHT(FM) to one or more in-market minority operators or new market entrants.[20] Indeed, as discussed above, Urban One says that it has already entered into an agreement to sell KROI(FM) to a minority-owned broadcaster that is a new entrant to the Houston Market. In addition, Urban One states that it is actively engaged in efforts to sell KTHT(FM) and that use of the proposed divestiture trust will provide more time for the trustee and Urban

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[10] Application File No. 0000213910, attach., Description of Transaction at 3.

[11] Application File No. 0000213907, attach., Engagement Agreement (revised) §§ 1, 3 & exh. A, Form of Trust Agreement § 4(f).

[12] Application File No. 0000213907, attach., Engagement Agreement (revised), exh. A, Form of Trust Agreement § 4(f).

[13] *Shareholders of AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16062, 16073 (2000) (*AMFM*).

[14] *AMFM*, 15 FCC Rcd at 16072 (citations omitted).

[15] *Id.* at 16073.

[16] *Infinity Broadcasting Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 5012, 5041 (1996).

[17] *AMFM*, 15 FCC Rcd at 16073.

[18] Application File No. 0000213910, attach., Description of Transaction at 4. As discussed above, simultaneously with its acquisition of KKBQ(FM), KHPT(FM), KGLK(FM), and KTHT(FM) from CMG, Radio One would assign KTHT(FM) and KROI(FM) to the Sugarland Trust. *See supra* note 7 & accompanying text.

[19] Application File No. 0000213910, attach., Description of Transaction at 4 & exh. 1, BIA Houston Report. Indeed, staff review of BIA's Media Access Pro database suggests that currently there are 38 independent owners (excluding the applicants) of full-service AM and FM radio stations (commercial and noncommercial) in the Houston Market.

[20] Application File No. 0000213910, attach., Description of Transaction at 4.

One to find a potential buyer to acquire the station.[21] Urban One says it is confident that KTHT(FM) will attract buyers because KTHT(FM) (a Class C station) and KROI(FM) (a class C1 station) each serve a substantial portion of the Houston Market and are ranked in or near the top third of approximately 80 full-service AM and FM stations serving the market.[22] Under these circumstances we conclude that the proposed use of the divestiture trust for a limited period is in the public interest.

Conclusion/Actions. Based on our review of the assignment applications, we conclude that the applicants are fully qualified and that grant of the applications, subject to the conditions set forth below, will serve the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 309, and 310(d) of the Communications Act of 1934, as amended,[23] and sections 0.61(a) and 0.283 of the Commission's rules,[24] that the applications for consent to the assignment of licenses from CMG NY/Texas Radio, LLC, Assignor, to Radio One Licenses, LLC, Assignee, application file no. 0000213910; CMG NY/Texas Radio, LLC, Assignor, to the Sugarland Station Trust, LLC, Assignee, application file no. 0000213906; and Radio One Licenses, LLC, Assignor, to the Sugarland Station Trust, LLC, Assignee, application file no. 0000213907, ARE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

The transaction approved in application file no. 0000213910 must be consummated prior to or concurrently with transaction approved in application file no. 0000213907.

The licenses and authorizations issued by the Commission for station KROI(FM), Seabrook, Texas, facility ID no. 35565, and KTHT(FM), Cleveland, Texas, facility ID no. 65308, must be assigned by the Sugarland Station Trust, LLC, pursuant to a long-form assignment of license application to an unrelated third party within two years after its acquisition of the assets of the stations, and the Sugarland Station Trust, LLC, must submit (to the attention of the Chief, Audio Division, Media Bureau), every six months after its acquisition of such assets, a report describing the efforts to market those assets to third parties.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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[21] *Id.*

[22] *Id.*

[23] 47 U.S.C. §§ 154(i), 154(j), 309, 310(d).

[24] 47 CFR §§ 0.61(a), 0.283.

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 23-607
Released: July 14, 2023

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

WC Docket No(s). 23-196, 23-201 & 23-210

Comments Due: July 31, 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 **August 14, 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 **July 31, 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

[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): Windstream New Edge, LLC**
WC Docket No. 23-196, Comp. Pol. File No. 1849
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-196*%22))
Affected Service(s) – TDM-based DS1/T1 services
Service Area(s) – New Berlin, Milwaukee and West Allis, Wisconsin
Authorized Date(s) – on or after August 15, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): Level 3 Telecom of Texas, LLC**
WC Docket No. 23-201, Comp. Pol. File No. 1850
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-201%22))
Affected Service(s) – Channel 12 Service, Digital PBX Trunk Service, Direct SIP Service, and Managed IP Trunks
Service Area(s) – Austin, Texas
Authorized Date(s) – on or after August 15, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

3) **Applicant(s): Fusion Cloud Services, LLC, Fusion Communications, LLC and Fusion Telecom of Texas, Ltd., L.L.P.**
WC Docket No. 23-210, Comp. Pol. File No. 1852
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-210%22))
Affected Service(s) – VoIP services
Service Area(s) – California, Colorado, Georgia, Illinois, Massachusetts, Michigan, Minnesota and Texas
Authorized Date(s) – on or after August 14, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

PUBLIC NOTICE

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

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

DA 23-608
Released: July 17, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-152

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

> Domestic Section 214 Application Filed for the Transfer of Control of Kennebec Telephone Company, Inc., WC Docket No. 23-152, Public Notice, DA 23-508 (WCB 2023).

Effective Grant Date: July 15, 2023

For further information, please contact Myrva Charles at (202) 418-1506 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 Street NE
Washington, DC 20554

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

DA 23-609
Released: July 17, 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 five 900 MHz broadband segment license application (see Appendix). On May 13, 2020, the Commission realigned the 900 MHz band to make available six megahertz of low-band spectrum for the development of critical wireless broadband technologies and services, while reserving the remaining four megahertz of spectrum for continued narrowband operations.[1] In accordance with the *900 MHz Report and Order*,[2] the Bureau announced that the opening date for acceptance of 900 MHz broadband segment applications began on May 27, 2021.[3]

The Bureau finds the 900 MHz broadband segment 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, no section 27.1503(c)(2) anti-windfall payment is due for the licenses listed in the Appendix. Therefore, the Bureau finds that granting the applications for the 900 MHz broadband segment license listed in the Appendix serves the public interest, convenience, and necessity.

Accordingly, by this Public Notice, we announce the grant of the licenses listed in the Appendix. We grant these licenses pursuant to section 309(a) of the Communications Act, 47 U.S.C. § 309(a), and sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. These new 900 MHz broadband licensees may begin operation in the applicable counties, subject to 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	0010415737	0023948573	D08059	Jefferson County, CO	N/A
PDV Spectrum Holding Company, LLC	0010415742	0023948573	D08039	Elbert County, CO	N/A
PDV Spectrum Holding Company, LLC	0010415746	0023948573	D08047	Gilpin County, CO	N/A
PDV Spectrum Holding Company, LLC	0010415761	0023948573	D08005	Arapahoe County, CO	N/A
PDV Spectrum Holding Company, LLC	0010415767	0023948573	D08001	Adams 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.

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 23-610
Released: July 17, 2023

MEDIA BUREAU REMINDS BROADCASTERS OF THE OBLIGATION TO FILE BIENNIAL OWNERSHIP REPORTS

By this Public Notice, the Media Bureau of the Federal Communications Commission (Commission or FCC) reminds broadcast licensees of the importance of filing their biennial ownership reports on FCC Form 323 or 323-E, as required by the Commission's rules.

Pursuant to the Commission's rules, licensees of commercial and non-commercial full power television, Class A television, low power television, AM radio, and FM radio stations must file biennial ownership reports with the Commission in odd-numbered years.[1] Accordingly, the next filing window for biennial ownership reports currently is scheduled to open October 2nd of this year. Reporting such information has long been a fundamental obligation of broadcast licensees.[2] The accurate, and timely, filing of ownership information is critical to ensuring that the public knows who owns, operates, and controls broadcast stations. Additionally, accurate and timely ownership information is crucial to an understanding of the broadcast industry as a whole, including an understanding of the diversity and multiplicity of owners.

Given the importance of the biennial ownership reporting requirement, both to inform the Commission and the public as to the station's current ownership, and to support the Commission's policy-making efforts with comprehensive, reliable data reflecting the race, gender, and ethnicity of attributable interest holders in broadcast stations, we encourage licensees to prepare in advance for the upcoming October 2, 2023 biennial filing window.

– FCC –

[1] *See* 47 C.F.R. §§ 73.3615(a), (d); 73.6026; 74.797. Biennial ownership reports must contain information that is current as of October 1 of the filing year. *Id.* §§ 73.3615(a), (d); 74.797. In addition, reports must provide all information required by, and comply with all requirements set forth in, the current version of the relevant broadcast ownership report form (FCC Form 323 or 323-E). *Id.* §§ 73.3615(a), (d); 74.797.

[2] We note further that a licensee must maintain its current ownership report in the station's Online Public Inspection File, which is intended to "encourage a continuing dialogue between broadcasters and the public to ensure stations meet their obligations and remain responsive to the needs of the local community." Media Bureau, FCC, *The Public and Broadcasting 28* (2021).

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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Petition for Waiver by MetOcean Telematics, Ltd.	)	
	)	

ORDER

Adopted: July 17, 2023 **Released: July 17, 2023**

By the Chief, Wireline Competition Bureau and the Managing Director, Office of the Managing Director:

I. INTRODUCTION

1. In this Order, we grant a petition for waiver of the 45-day deadline to revise the August 2022 FCC Form 499-Q filed by MetOcean Telematics, Ltd. (MetOcean).[1] MetOcean requests that the Commission waive the 45-day deadline for revising the FCC Form 499-Q, and reverse a decision of the Universal Service Administrative Company (USAC) that rejected as untimely MetOcean's revised August 2022 FCC Form 499-Q. We grant MetOcean's request for waiver and direct USAC to accept MetOcean's revised August 2022 FCC Form 499-Q as if timely filed, and to process it accordingly.[2] Additionally, we waive the Commission's red light rule for the limited purposes of granting the above relief and permitting USAC to process MetOcean's revised FCC Form 499-Q.[3]

II. BACKGROUND

A. The Act and the Commission's Rules

2. Section 254(d) of the Communications Act of 1934, as amended (the Act), directs that "every telecommunications carrier that provides interstate telecommunications services 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."[4] Section 254(d) further provides that "[a]ny other provider of interstate telecommunications may be required to contribute to the

[1] *Emergency Request for Review of a Universal Service Administrator Decision and Petition for Waiver of 45-Day Revision Deadline by MetOcean Telematics Limited*, WC Docket No. 06-122 (filed Jan. 27, 2023) (Petition) (portions confidential).

[2] MetOcean also seeks a waiver of all interest and penalties assessed on the universal service fund contributions amounts resulting from its August 2022 FCC Form 499-Q. This request is moot insofar as it relates to the original filed August 2022 FCC Form 499-Q because we waive the FCC Form 499-Q revision deadline and direct USAC to process MetOcean's revised FCC Form 499-Q as if timely filed in August 2022, however, interest and penalties associated with MetOcean's delay in payment for these months will be recalculated and assessed based on the revised filing.

[3] 47 CFR § 1.1910. Because MetOcean did not request a waiver of the Commission's red light rule, we take this action *sua sponte* for the limited purposes of granting MetOcean's request to waive the 45-day deadline and permitting USAC to process MetOcean's revised FCC Form 499-Q.

[4] 47 U.S.C. § 254(d).

preservation and advancement of universal service if the public interest so requires."[5] To this end, the Commission has determined that common carriers and private carriage providers that provide interstate telecommunications to others for a fee generally must contribute to the Universal Service Fund (USF or Fund) based on their interstate and international end-user telecommunications revenues.[6]

3. In the *Universal Service Second Order on Reconsideration*, the Commission set forth the specific methodology for contributors to use in computing their universal service contributions.[7] The Commission also designated USAC as administrator of the Fund, pursuant to which USAC performs billing and collection functions for the Commission as part of its administration of the USF support mechanisms.[8] Under Commission rules, contributors are required to file an FCC Form 499-Q each quarter, projecting their interstate and international revenues for the upcoming quarter and providing their interstate and international revenues from the previous quarter.[9] USAC computes the entities' quarterly universal service contribution obligation based on the projected revenue information reported on the FCC Form 499-Q, and bills entities each month based on this obligation.[10] Contributors have the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing.[11] In April of each year, contributors file the FCC Form 499-A to report their actual revenues from the previous year.[12] USAC uses the FCC Form 499-A data to conduct a true-up process whereby USAC determines the actual amount owed by each contributor from the previous year and issues either an invoice for underpayment or a credit for the overpayment.[13]

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[5] *Id.*

[6] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9183–84, para. 795 (1997) (subsequent history omitted). Although the Commission exercised its permissive authority to assess private carriage providers, it exempted certain government entities, broadcasters, schools, libraries, systems integrators, and self-providers from the contribution requirement. 47 CFR § 54.706(d). The Commission also requires certain other providers of interstate telecommunications to contribute to the Fund. *See, e.g.*, *Universal Service Contribution Methodology et al.,* CC Docket No. 96-45 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7544, para. 52 (2006) (requiring interconnected voice over Internet protocol providers to contribute to the Fund).

[7] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Universal Service Second Order on Reconsideration*).

[8] *Id*. at 18423–24, para. 42; 47 CFR § 54.702(b).

[9] *See* 47 CFR §§ 54.706 (a)-(b), 54.711; *see also* 2022 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 11-18.

[10] 47 CFR §§ 54.709, 54.711(a).

[11] *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972, para. 36 (2002) (*2002 Contribution Methodology Order*); 2022 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 8.

[12] *2002 Contribution Methodology Order,* 17 FCC Rcd at 24973, para. 37.

[13] *Id.* at 24972, para. 36. USAC will 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 FCC Form 499-A, then USAC will provide a refund to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its FCC Form 499-A, then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. *Id*. In adopting the true-up process, the Commission created incentives for carriers to accurately report their quarterly revenues by instructing USAC to base overpayment refunds on an average of the lowest two contribution factors for the year, and collect underpayments based on an average of the two highest contribution factors from that year. *See Federal-State Joint Board on Universal Service;*

(continued….)

4. In 2004, the Commission adopted rules implementing the requirements of the Debt Collection Improvement Act of 1996 (DCIA), which directs government agencies to "try to collect a claim of the [U.S.] Government for money or property arising out of the activities of, or referred to, the agency."[14] The Commission's DCIA rules generally require that entities or individuals doing business with the Commission pay their debts on time.[15] In 2007, the Commission adopted rules to strengthen oversight of the USF contributions process and align it with the DCIA.[16] First, the Commission restructured the rate of interest assessed against USF contributions debt that is more than 30 days delinquent, setting the interest rate for delinquent debt at U.S. prime rate plus 3.5 percent.[17] The Commission designed this interest rate to be consistent with commercial practices, and to address shortcomings under the previous structure.[18] Also, consistent with the Commission's DCIA rules, the Commission established that USF debt that is more than 90 days delinquent will incur an additional penalty of six percent per year.[19] Pursuant to section 54.713 of the Commission's rules, contributors must pay the amount billed by the due date provided in invoices to avoid the assessment of interest and penalties provided under the DCIA requirements.[20] If a contributor does not pay a disputed assessment, USAC cannot waive the interest or penalties unless the disputed charges are later found to be a result of a USAC error, or USAC is directed to do so by the Commission.[21]

5. The Commission's red light rule, adopted in its *2004 DCIA Order*, requires that action be withheld on any application or other request for benefits made by an entity that is delinquent in debts owed to the Commission and dismissal of such applications or requests if the delinquent debt is not resolved.[22] A delinquent debt is a claim or debt that has not been paid by the date specified in an initial written demand for payment unless other satisfactory payment arrangements have been made, or the

(Continued from previous page)
Petition for Reconsideration Filed by AT&T, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752–53, para. 12 (2001).

[14] *See Amendment of Parts 0 and 1 of the Commission's Rules*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004) (*2004 DCIA Order*); 47 CFR Part 1, Subpart O; 31 U.S.C. § 3711(a). Congress enacted the DCIA to strengthen federal debt collection procedures. Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

[15] *2004 DCIA Order*, 19 FCC Rcd at 6542, para. 5.

[16] *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, 16379, paras. 1, 14 (2007) (*2007 Comprehensive Review Order*).

[17] *Id*. at 16379, para. 14. Prior to the *2007 Comprehensive Review Order*, USAC had varied measures to reduce contributor delinquency and pursue debtors with outstanding contribution obligations. In the *2007 Comprehensive Review Order*, the Commission adopted a single standard to be used in assessing late fees. *Id.* at 16378, para. 12.

[18] *Id.* at 16376, para. 9.

[19] *Id.* at 16381, para. 17.

[20] 47 CFR § 54.713(a) ("A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed"), (b) ("If a universal service fund contributor fails to make full payment on or before the date due of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, the payment is delinquent. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest . . . as well as administrative charges of collection and/or penalties . . . .").

[21] 47 C.F.R. § 54.702(c) (prohibiting the Administrator from making policy or interpreting Commission rules); *see Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5482, para. 362 (2012).

[22] 47 CFR § 1.1910.

debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule.[23]

B. Petition

6. MetOcean provides integrated satellite-based Internet of Things systems and machine-to-machine services for commercial and government customers.[24] MetOcean began filing the FCC Forms 499 in April 2020 as a satellite voice reseller.[25] Prior to 2020, MetOcean contributed indirectly to the Fund via pass-through charges billed by its underlying carrier.[26] Between April 2020 and August 2022, MetOcean reported zero revenues on the company's FCC Forms 499-Q, incorrectly believing that its indirect contributions meant that the underlying carrier had the sole revenue reporting obligation.[27] After MetOcean filed its 2022 FCC Form 499-A, the company was informed by USAC that it had a revenue reporting obligation.[28] Following this notification, MetOcean reported historic and projected telecommunications revenues on its August 2022 FCC Form 499-Q.[29]

7. On October 21, 2022, MetOcean received an invoice from USAC with a monthly USF contribution significantly higher than it expected.[30] MetOcean reports that it realized that, among other things, the company mistakenly reported its total telecommunications revenue, not its total U.S. telecommunications revenue, on Line 116 of its August 2022 FCC Form 499-Q.[31] On November 22, 2022, MetOcean filed a revised August 2022 FCC Form 499-Q. USAC rejected the revised form as untimely because it was filed beyond the 45-day deadline for revisions.[32] MetOcean did not pay its outstanding invoices while it investigated the increased monthly contribution obligation, and was subsequently placed on red light status.

8. On January 27, 2023, MetOcean filed the Petition seeking a waiver of the 45-day deadline to revise the FCC Form 499-Q.[33] Additionally, MetOcean seeks a reversal of all interest charges and penalties connected with the contributions charges on its October, November, and December 2022 invoices.[34] In its Petition, MetOcean argues that good cause for granting a waiver of the 45-day rule exists because: (1) the reporting error MetOcean made in its August 2022 FCC Form 499-Q was an unintentional clerical error; (2) the clerical error is of such magnitude as to cause disproportionate harm; (3) the company was unaware of the revision deadline until after the 45-day revision deadline passed; and (4) strict adherence to the revision deadline in this case does not serve the public interest.[35]

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[23] 47 CFR § 1.1901(i).

[24] Petition at 2.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id*. at 3.

[29] *Id.*

[30] *Id*.

[31] *Id.* at 3–4.

[32] *Id.* at 4. *See* 2022 FCC Form 499-Q Telecommunications Reporting Worksheet Instructions at 8.

[33] *Id*. at 1.

[34] *Id*. at 5.

[35] *Id*. at 4–7.

III. DISCUSSION

9. Generally, the Commission's rules may be waived for good cause shown.[36] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[37] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[38] In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.[39]

10. In the *2002 Contribution Methodology Order*, the Commission established a 45-day period for carriers to review their FCC Form 499-Q filings.[40] This deadline is necessary to eliminate incentives for contributors to review their revenue projections after the contribution factor is announced for the upcoming quarter (thereby reducing their contribution obligations), and to reduce the likelihood of a Fund shortfall in a given calendar quarter.[41] In light of these regulatory policies, we do not routinely grant waivers of the 45-day revision deadline.[42]

11. In the limited circumstances presented here, however, we find that equity and hardship considerations weigh in favor of granting MetOcean's request for waiver of the FCC Form 499-Q revision deadline. MetOcean states that the revenue reporting error it made on the August 2022 Form 499-Q, to wit, reporting its total telecommunications revenue (including from calls that originate and terminate outside of the U.S.), rather than reporting its total U.S. telecommunications revenue, was an unintentional ministerial error that resulted in invoices for the relevant quarter that were many magnitudes higher than they should have been.[43] MetOcean states that requiring it to pay the invoices would create a "crushing financial burden" and would leave MetOcean in "a precarious financial position."[44]

12. MetOcean states that it did not learn of its error until after USAC sent an invoice, which occurred after the 45-day revision deadline had passed.[45] Generally, simple negligence by a filer is "insufficiently unique" to warrant waiver of a filing deadline.[46] However, the circumstances presented here are sufficiently unique to warrant a waiver of the filing deadline despite the professed negligence on the part of MetOcean. While MetOcean states that it was not aware of the deadline to revise its Form

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[36] 47 CFR § 1.3.

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

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

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

[40] *2002 Contribution Methodology Order*, 17 FCC Rcd at 24972, para. 36.

[41] *Id.*

[42] *See Universal Service Contribution Methodology; Aventure Communications Technology, LLC Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45-Day Revision Deadline*, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096, 10098, para. 7 (WCB 2008).

[43] Specifically, MetOcean states that its clerical error would result in a quarterly contribution more than 130 times the contribution it would owe based on revenues it reports on its corrected FCC Form 499-Q. *Id.* at 6.

[44] *Id*. at 6–7.

[45] *Id*. at 6.

[46] *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et. al.*, WC Docket No. 06-122; CC Docket No. 96-45; Order, 25 FCC Rcd 10861, 10864, para. 7 (WCB 2010) ("It is the responsibility of contributors to familiarize themselves with any applicable regulations and to ensure that filings are received by the deadline. As such, and in accordance with federal law, simple negligence on the part of a filer is insufficiently unique to justify waiver of the deadlines for revising FCC Forms 499.").

499-Q until after it received an invoice, the large amount owed due to the error on the original form outweighs the requirement that contributors be aware of filing deadlines. As such, we find that it is in the public interest to waive the revision deadline for the Form 499-Q.

13. We also find good cause to waive the Commission's red light rule to grant MetOcean's request for a waiver of the 45-day filing deadline in these limited circumstances. MetOcean's error would require it to pay a contribution amount 130 times greater than the contribution assessment based on correctly reported revenues, resulting in extreme financial hardship for MetOcean. Under these unique circumstances – the ministerial nature of MetOcean's mistake, the extreme disparity between the amount MetOcean would owe based on its August 2022 FCC Form 499-Q and the amount it would owe based on its revised FCC Form 499-Q, and the significant financial hardship MetOcean would experience if required to pay the original contribution amounts – we find that waiving the red light rule in this limited circumstance is consistent with the policy considerations underlying the red light rule.[47] Based on these facts, we conclude that strict enforcement of the red light rule and the 45-day revision filing deadline would disproportionately penalize MetOcean and moreover, would not promote the overall policies of the USF program or serve the public interest.

14. In summary, given the magnitude of the consequences of the error, we find that good cause exists to waive the red light rule and the filing deadline for the revised August 2022 FCC Form 499-Q. MetOcean's request to waive all accrued interest and penalties associated with its original Form 499-Q filing is moot because we waive the revision deadline and allow USAC to process MetOcean's revised Form 499-Q. We direct USAC to accept the revised filing as if timely filed in August 2022 and to process it accordingly, and to assess interest and penalties on the revised contribution amount owed as appropriate due to MetOcean's delay in payment.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.11, 0.91, 0.231, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.11, 0.91, 0.231, 0.291, 1.3 and 54.722(a), the Petition for Waiver filed by MetOcean Telematics, Ltd. is GRANTED.

16. IT IS FURTHER ORDERED pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.11, 0.91, 0.231, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.11, 0.91, 0.231, 0.291, 1.3, 54.722(a), section 1.1910 of the Commission's rules, 47 CFR § 1.1910, is WAIVED to the limited extent provided herein.

[47] *See Metropolitan Nashville Public Schools Nashville, TN,* Order, DA 18-1283, 2018 WL 6722648 (WCB and OMD, Dec. 20, 2018) (*Metropolitan Nashville*). In *Metropolitan Nashville*, USAC dismissed an applicant's funding application for over $3,600,000 in E-Rate support because the applicant was on red light for a $1,500 debt. The Commission granted a limited waiver of the red light rule to permit the dismissed funding application to be reinstated and processed, finding good cause to waive the red light rule because, among other factors, there was a "grossly disproportionate disparity between the amount owed and the amount of funding dismissed as a result of the delinquent debt." The Commission cautioned however that it was unlikely the waiver would have been granted in less extreme circumstances and we reiterate that caution here. *Id*. at *5.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

Mark Stephens
Managing Director
Office of the Managing Director

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 23-612
Released: July 17, 2023

EFFECTIVE DATE AND COMMENT DATES SET FOR ATSC 3.0 *THIRD REPORT AND ORDER FOURTH FNPRM*

MB Docket No. 16-142

Comment Date: September 15, 2023
Reply Comment Date: October 16, 2023

On June 23, 2023, the Commission released a Third Report and Order and Fourth Further Notice of Proposed Rulemaking in the Next Generation Television ("Next Gen TV" or "ATSC 3.0") docket.[1] By this Public Notice, we announce that today the Federal Register published a summary of the *Third Report and Order and Fourth FNPRM*.[2]

The *Third Report and Order* adopted rules permitting the licensing of simulcast and non-simulcast multicast streams and extended the sunset dates until July 17, 2027 for the Commission's "substantially similar" requirement and the requirement for Next Gen TV stations to comply with the A/322 standard. The *Fourth FNPRM* sought comment on issues related to the marketplace for ATSC 3.0 Standard Essential Patents (SEPs).

The Commission stated that the *Third Report and Order* and rules would become effective 30 days after publication in the Federal Register, except for rule sections 73.3801, 73.6029, and 74.782, which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) and which shall become effective after the Commission publishes a notice in the *Federal Register* announcing OMB approval and the effective date of these rules.[3] Accordingly, the rules adopted in the *Third Report and Order* will take effect on August 16, 2023, except for rule sections 73.3801, 73.6029, and 74.782, which require OMB approval. The Media Bureau will issue a Public Notice announcing when these rules will take effect.

The *Fourth FNPRM* set deadlines for filing comments and reply comments at 60 and 90 days, respectively, after publication of the *FNPRM* in the Federal Register.[4] Comments must be submitted no

[1] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 23-53 (rel. Jun. 23, 2023) (*Third Report and Order and Fourth FNPRM*). The document is available on the Commission's website at https://www.fcc.gov/document/fcc-adopts-atsc-30-multicast-licensing-and-extends-sunset-dates.

[2] *Third Report and Order*, Final Rule, 88 FR 45347 (Jul. 17, 2023); *Fourth FNPRM, Proposed Rule,* 88 FR 45378 (Jul. 17, 2023).

[3] *Third Report and Order and Fourth FNPRM* at ¶ 66.

[4] *See id.* at page 1.

later than September 15, 2023. Reply Comments must be submitted no later than October 16, 2023. Commenters should follow the filing instructions provided in the *Fourth FNPRM*.[5]

For additional information, contact Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, at (202) 418-7142. Press inquiries should be directed to Janice Wise, (202) 418-8165.

--FCC--

[5] *See id.* at ¶ 62.

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

In re Application of	)	
	)	
Mount Vernon Broadcasting LLC	)	FRN: 0028624492
	)	Facility ID No. 37471
For Renewal of License for	)	File No. 0000083788
Station WJXO(AM)	)	
Chattahoochee, Florida	)	

ORDER

Adopted: July 19, 2023 **Released: July 19, 2023**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Mount Vernon Broadcasting LLC (Licensee), the licensee for Station WJXO(AM), Chattahoochee, Florida (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station. In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Online Public Inspection File Rule contained in section 73.3526 of the Commission's rules (Rules).[1] The Bureau's Audio Division suspended processing of the Application because Licensee did not comply with its public file obligations in section 73.3526.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3526 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

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

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

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[2] and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,[3] the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

[1] 47 CFR § 73.3526.

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

[3] 47 CFR §§ 0.61, 0.283.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mount Vernon Broadcasting Company LLC, c/o Barry D. Wood, Esq., 3300 Fairfax Drive , Suite 202, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of Online Public Inspection Files of	)	File No.: 0000083788
	)	
Mount Vernon Broadcasting LLC	)	FRN: 0028624492
	)	
Licensee of Station WJXO(AM)	)	
Chattahoochee, Florida	)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Mount Vernon Broadcasting LLC (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with section 73.3526 of the Commission's rules,[1] relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3526.

I. DEFINITIONS

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

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

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

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

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

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

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

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

(h) "Licensee" means Mount Vernon Broadcasting LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

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

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

[1] 47 CFR § 73.3526.

II. BACKGROUND

3. Section 73.3526 requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission's public inspection file database throughout the year. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations.

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

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

III. TERMS OF AGREEMENT

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

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

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

9. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to process the Licensee's pending radio license renewal application identified in Appendix A in the ordinary course. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

10. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[2]

11. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it failed to timely place records in its online public inspection file, in repeated violation of section 73.3526 of the Rules.

[2] *See* 47 CFR § 1.93(b).

12. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.[3] The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee's admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the online public inspection file and record keeping or otherwise.

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

14. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that he shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 14(c), shall apply to all radio stations owned by the Licensee. The Compliance Plan shall contain, at a minimum, the following elements:

a) **Compliance Manual**. The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Licensee may adopt a Compliance Manual that he has prepared or one that has been prepared by an outside source, such as a trade association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:

   i. thoroughly explain the requirements embodied in the Online Public Inspection File Rule;

   ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and

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

b) **Compliance Training Program**. If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered

[3] *See* 47 U.S.C. § 503(b)(2)(E).

Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Licensee shall provide training under the compliance training plan on at least an annual basis, and he shall periodically review and revise the compliance training program as necessary to ensure that it remains current, complete, and effective.

c) **Compliance Report**. One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for each station listed in Appendix A. The compliance report shall contain a certification of the Licensee's compliance with the Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require the Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 15 below.

i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the operating procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.

ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules,[4] and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.

iv. The compliance report shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

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

16. **Termination Date**. The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 14(c), *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

17. **Further Violation(s)**. The Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against the Licensee, including the issuance of notices of apparent

[4] 47 CFR § 1.16.

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

18. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[5] relating to the matters addressed in this Consent Decree.

19. **Severability**. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

21. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

25. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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

27. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.



Albert Shuldiner
Chief, Audio Division

July 19, 2023
Date

Barry D. Wood
Mount Vernon Broadcasting LLC

Date

27. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Albert Shuldiner
Chief, Audio Division

Date

Barry D. Wood
Mount Vernon Broadcasting LLC

14 July 2023
Date

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
WJXO(AM)	Chattahoochee, Florida	0000083788

Federal Communications Commission
Washington, DC 20554
July 19, 2023

DA 23-615

SMALL ENTITY COMPLIANCE GUIDE

Unlicensed White Space Device Operations in the Television Bands; Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37

FCC 23-24
ET Docket Nos. 14-165 and 20-36
Adopted April 11, 2023

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Guide is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the 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 in the above-referenced proceeding and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in its approach to implementing a rule or it may clarify or update the text of the Guide. Direct your comments, recommendations, or request 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 *Order on Reconsideration, Report and Order, and Memorandum Opinion and Order* in ET Docket Nos. 14-165 and 20-36, the Federal Communications Commission (Commission) adopted three orders regarding the effective and efficient management of white space devices operating in the broadcast television (TV) bands and portions of the 600 MHz band.[1]

The Commission's actions in the *Order on Reconsideration* rejected a petition for reconsideration of two rules changes and upheld prior Commission decisions concerning the operation of mobile white space devices and narrowband white space devices utilizing broadcast TV bands.

Relatedly, the *Report and Order* adopted rules specifying how often mobile and narrowband white space devices must contact a white space database to determine the operating channels and associated maximum permissible power levels that are available at a device's location. The amended rules: (1) require a mobile white space device to contact a white space database at least once per hour to determine whether its operating channel continues to be available, and (2) require a narrowband white space device to contact a white space database at least once per day to determine whether its operating channel continues to be available.

Lastly, in the *Memorandum Opinion and Order*, the Commission declined to modify existing rules to permit white space databases to use more complex terrain-based models to determine which TV channels are available for white space operation at a particular location, opting to retain the current model for determining TV channel availability.[2] Additionally, the *Memorandum Opinion and Order* corrects section 15.713(e)(6) of the rules, which pertains to the maximum permissible antenna height above ground for fixed white space devices.[3]

The steps taken by the Commission in the *Order on Reconsideration, Report and Order, and Memorandum Opinion and Order* further its goals of providing clarity to white space device users and manufacturers, while also optimizing the use of white space devices. Moreover, these actions facilitate improved broadband services to all Americans, particularly those in rural, Tribal and other underserved areas, while also protecting other operations in the TV bands from harmful interference.

II. COMPLIANCE REQUIREMENTS

The compliance requirements resulting from the Commission's actions in the *Order on Reconsideration, Report and Order, and Memorandum Opinion and Order*, which revises the database re-check requirements in section 15.711(h) for various categories of white space devices, are set forth in the *Report and Order*. Due to the technical similarities between mobile and fixed devices, the Commission opted to require mobile devices to re-check the white space databases at least once per hour, which is the same re-check interval required for fixed devices (excluding narrowband). For narrowband devices, the Commission required maintaining the current once daily re-check, as it concluded narrowband devices had a very low likelihood of causing harmful interference to licensed wireless microphones and therefore did not necessitate an hourly database re-check.

The revised section contains three paragraphs which specify the re-check requirements that apply to:

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[1] *Unlicensed White Space Device Operations in the Television Bands; Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37*, ET Docket Nos. 14-165 and 20-36, Order on Reconsideration, Report and Order, and Memorandum Opinion and Order, FCC 23-24 (Apr. 12, 2023) (*Order on Reconsideration, Report and Order, and Memorandum Opinion and Order*).

[2] 47 CFR § 15.712. This section requires white space devices to meet minimum separation distances from the protected contours of co-channel and adjacent channel TV stations, as well as from other protected services including licensed wireless microphones, land mobile stations, and certain receive sites.

[3] Id. § 15.713(e)(6).

(1) mobile, fixed and Mode II personal/portable devices (excluding narrowband devices) operating in the TV bands; (2) fixed and Mode II personal/portable devices operating outside of the TV bands; and (3) narrowband devices (which operate only in the TV bands).

A. Mobile Device Database Re-check Requirements (47 CFR §§ 15.711(h)(1) & (k)(9))

- Mobile white space devices are now subject to the same database re-check requirements as fixed and Mode II personal/portable devices (excluding narrowband devices) that operate in the TV bands. Specifically, section 15.711(h)(1) was modified to make mobile white space devices subject to the same database re-check requirements as these other categories of devices. In addition, section 15.711(k)(9) was modified to replace the former database re-check requirements for mobile devices with a cross-reference to section 15.711(h)(1) that will specify the applicable database re-check requirements.
- Under section 15.711(h)(1), mobile devices must access the white space database at least once every 60 minutes to verify that the operating channel(s) and associated maximum permissible power levels continue to be available at their location. Devices must adjust their channel usage in accordance with the most recent channel availability schedule information provided by the white space database for the two-hour period beginning at the time the device last accessed the database. Scheduling information is provided by the database when necessary to protect registered licensed wireless microphones near a white space device's location.
- If a device fails to successfully contact the white space database, it may continue to operate until no longer than 120 minutes after the last successful contact, at which time it must cease operations until it reestablishes contact with the white space database and re-verifies its list of available channels and associated maximum power levels.

B. Narrowband Device Database Re-check Requirements (47 CFR §§ 15.711(h)(2) & (3))

- Narrowband white space devices are no longer subject to the same database re-check requirements as fixed and Mode II personal/portable devices operating outside of the TV bands specified in section 15.711 (h)(2). Instead, they are required to comply with the database re-check requirements in a new subsection 15.711(h)(3).
- A narrowband device that has been in a powered-on state shall access the database at least once each 24-hour period to verify that the operating channel(s) and associated maximum power levels continue to be available at its location.
- A device must cease operating if it fails to successfully access the database within 24 hours from its last successful contact. It may not resume operation until it re-establishes contact with the white space database and re-verifies its list of available channels and corresponding power levels.

In the *Memorandum Opinion and Order*, the Commission declined to modify existing rules to permit white space databases to use more complex terrain-based models (such as the Longley-Rice Irregular Terrain Model) to determine which TV channels are available for white space operation at a particular location; therefore no compliance requirements are changed. The Commission, however, modified section 15.713(e)(6) by removing an incorrect reference to a 30 meter antenna height above ground limit for fixed white space devices.[4] This is a ministerial revision that conforms the text of the rule to the Commission's decision in the *2020 White Spaces Order and FNPRM* and therefore does not change any

[4] 47 CFR § 15.713(e)(6).

compliance requirements.[5]

Lastly, in the *Order on Reconsideration*, the Commission continued to allow mobile devices to operate at 16 watts Effective Isotropic Radiated Power (EIRP) and permit narrowband white space devices to operate in all areas rather than limiting them to "less congested" areas. The *Order on Reconsideration* does not change existing rules concerning these areas, nor does it change any related compliance requirements.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Order on Reconsideration, Report and Order, and Memorandum Opinion and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules in the *Order on Reconsideration, Report and Order, and Memorandum Opinion and Order* became effective on June 21, 2023.

V. INTERNET LINKS

A copy of the *Order on Reconsideration, Report and Order, and Memorandum Opinion and Order* is available at:

https://docs.fcc.gov/public/attachments/FCC-23-24A1.pdf.

A copy of the Federal Register Summary of the *Order on Reconsideration, Report and Order, and Memorandum Opinion and Order* is available at:

https://www.govinfo.gov/content/pkg/FR-2023-05-22/pdf/2023-10166.pdf**.**

[5] *Unlicensed White Space Device Operations in the Television Bands*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 12603 (2020) (*2020 White Spaces Order and FNPRM*). The Commission removed the antenna height above ground limit for most fixed white space devices. *See 2020 White Spaces Order and FNPRM*, 35 FCC Rcd at 12613-15, paras. 31-33.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 23-616
Released: July 18, 2023

WAVELENGTH LLC'S RURAL DIGITAL OPPORTUNITY FUND BIDS IN DEFAULT; LTD BROADBAND'S PETITION FOR WAIVER OF THE JUNE 7, 2021 ETC DOCUMENTATION DEADLINE DISMISSED

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 (RDOF or Auction 904) long-form applicant has defaulted. The long-form applicant's defaulted bids are identified in Attachment A. We also announce the dismissal of a waiver request that is moot as it relates to a prior default of a different applicant.

On December 7, 2020, we announced that there were 180 winning bidders in the auction and established the deadlines for winning bidders to submit their long-form applications for RDOF support.[1] Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.[2] All winning bidders that retained their winning bids and all related entities that were assigned winning bids were required to submit long-form applications by January 29, 2021.[3] On February 18, 2021, we announced that there were 417 long-form applicants.[4] 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]

Wavelength - California. On June 2, 2021, Wavelength, LLC ("Wavelength") filed a waiver petition to extend the June 7, 2021 deadline to document receiving an ETC certification for its winning bid areas in California.[6] On February 2, 2023, the California Public Utilities Commission (CPUC) denied Wavelength's request for ETC designation, and on March 3, 2023 Wavelength filed a request for

[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] 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 2, 2021).

rehearing of the ETC designation denial.[7] On May 23, 2023, we denied Wavelength's petition for waiver of the June 7, 2021 ETC designation documentation deadline as moot and in the alternative also denied it based on the merits.[8] We found that deferring final action on Wavelength's RDOF application in California until "any further proceedings relating to its California ETC designation have been completed" did not serve the public interest.[9] As Wavelength has been unable to obtain an ETC designation covering its winning bid areas in California, Wavelength cannot be authorized to receive RDOF support in those areas. Therefore, we consider Wavelength to be in default on these bids, as listed in Attachment A, and subject to forfeiture. We will refer these defaults to the Enforcement Bureau for further consideration.

A defaulter is subject to a base forfeiture per violation of $3,000.[10] 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.[11] 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.[12] 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.[13] 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.[14]

LTD Broadband – South Dakota. In an Order on August 10, 2022,[15] the Bureau denied LTD Broadband's (LTD's) Auction 904 application, and LTD thus defaulted in all remaining winning bid areas. In that Order, we neglected to dismiss LTD's request for waiver of the deadline to submit documentation of its ETC Designation in South Dakota. Given that the denial of LTD's long-form

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[7] California Public Utility Commission, Decision Granting Wavelength Internet, LLC A Certificate of Public Convenience and Necessity and Denying Designation as an Eligible Telecommunications Carrier, Order, Application 21-01-009 (Feb. 2, 2023); Wavelength, LLC, Application for Partial Rehearing of Decision 23-02-001 Denying Designation as an Eligible Telecommunications Carrier, Rehearing Request, Application 21-01-009 (Mar. 3, 2023).

[8] *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 Nos. 19-126 and 10-90, Public Notice, DA 23-434 (WCB/OEA May 23, 2023).

[9] *Id.* at 3 (quoting 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)).

[10] *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*).

[11] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

[12] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

[13] *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.

[14] *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).

[15] *Rural Digital Opportunity Fund Support For 80 Winning Bids Ready to be Authorized; Bid Defaults Announced*, WC Docket No. 19-126 et al., Public Notice, DA 22-848, (WCB/OEA August 10, 2022).

application effectively mooted the outstanding waiver request, we dismiss as moot LTD's request to waive the deadline to submit documentation of its ETC designation in South Dakota. Although LTD is challenging our application denial, subsequent events in South Dakota further compel the dismissal of the waiver request. On March 21, 2022, the South Dakota Public Utilities Commission (SDPUC) released an order denying LTD's application for ETC Designation in the state.[16] Though LTD sought rehearing on this denial and rehearing was initially granted on July 22, 2022, the SDPUC closed the rehearing docket through an Order dated October 12, 2022.[17] We find that the SDPUC's decision to deny LTD's ETC designation application and close the docket on rehearing makes LTD's petition for waiver moot.

Further Information Contact:

Press Information	**Office of Media Relations** Anne Veigle (202) 418-0500
General Universal Service Information	**Wireline Competition Bureau, Telecommunications Access Policy Division** Heidi Lankau Katie King (202) 418-7400 **Universal Service Administrative Company** Stephen Snowman (202) 414-2725
Auction 904 Information	
General Auction Information, Process, and Procedures	**Office of Economics and Analytics, Auctions Division** (717) 338-2868
Post-Auction Rules, Policies, and Regulations	**Office of Economics and Analytics, Auctions Division** (202) 418-0660
Small Businesses Additional information for small and disadvantaged businesses	**Office of Communications Business Opportunities** (202) 418-0990 http://www.fcc.gov/ocbo/
Accessible Formats Braille, large print, electronic files, or audio format for people with disabilities	**Consumer and Governmental Affairs Bureau** (202) 418-0530 fcc504@fcc.gov

[16] *See* Before the Public Utilities Commission of the State of South Dakota, Final Decision and Order Denying Application for Designation as an Eligible Telecommunications Carrier in Certain Census Blocks; Notice of Entry of Order, TC21-001 (Mar. 21, 2022), *available at* https://puc.sd.gov/commission/dockets/telecom/2021/TC21-001/TC21-001FinalOrderDenyPublic.pdf (last visited July 18, 2022).

[17] *See* Before the Public Utilities Commission of the State of South Dakota, Order Denying Request to Suspend the Docket; Order Granting the Motion to Close the Docket, TC21-001 (Oct. 12, 2022), *available at* https://puc.sd.gov/Dockets/Telecom/2021/TC21-001Close.pdf (last visited July 18, 2023).

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: 07/18/2023

Applicant Name	FRN	Winning Bid Name	State	# of Census Block Groups	# of Eligible Census Blocks	# of Locations	Winning Bid Amount (total over 10 years)
Wavelength LLC	0028008738	BLYTHE_CA	California	16	510	5,838	$ 2,363,879.30
Wavelength LLC	0028008738	IMPERIAL	California	29	990	4,902	$ 3,524,632.50
Wavelength LLC	0028008738	SALTON	California	29	968	7,435	$ 2,610,186.00
Wavelength LLC	0028008738	TWENTYNINE_PALMS	California	23	2,187	10,070	$ 6,073,140.30
Wavelength LLC	0028008738	VICTORVILLE	California	140	4,751	24,211	$ 14,560,083.30

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

In the Matter of	)	
	)	
Empowering Broadband Consumers Through Transparency	)	CG Docket No. 22-2
	)	
	)	

ORDER

Adopted: July 18, 2023 **Released: July 18, 2023**

By the Chief, Consumer and Governmental Affairs Bureau

I. INTRODUCTION

1. In this Order, we amend section 8.1(a)(1) of the Commission's rules to update the template for the recently adopted broadband consumer label. The revised label template reflects a new Affordable Connectivity Program (ACP) application landing page, now available at GetInternet.gov. This action does not modify or otherwise change any entity's underlying responsibilities under the *Broadband Label Order*.

II. BACKGROUND

2. In 2022, as required by the Infrastructure Investment and Jobs Act,[1] the Commission adopted broadband labels to help consumers comparison shop for broadband services.[2] The *Broadband Label Order* approved by the Commission requires broadband Internet access service providers (ISPs or providers) to display, at the point of sale, labels that disclose certain information about broadband prices, introductory rates, data allowances, and broadband speeds, and that include links to information about their network management practices, privacy policies, and the Commission's ACP. In particular, the rules require all providers to include in their labels information about the ACP, including whether the provider participates in the ACP and an active link to the website for ACP information and registrations.[3] At the time the rules were adopted, the relevant ACP URL was www.AffordableConnectivity.gov.

3. On May 4, 2023, the Wireline Competition Bureau (WCB) announced a new ACP application landing page available at GetInternet.gov.[4] In doing so, WCB stated that "this consumer-friendly site, now accessible through a simple and memorable URL, explains the benefits of the ACP, serves as a call to action for eligible consumers to apply, and enables consumers to easily apply for the

[1] The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (Infrastructure Act).

[2] *See Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (2022) (*Broadband Label Order*).

[3] *Broadband Label Order*, para. 54; 47 CFR § 8.1(a)(1), Figure 1.

[4] *Wireline Competition Bureau Announces New Affordable Connectivity Program Application Landing Page at GetInternet.gov*, WC Docket No. 21-450, Public Notice, DA 23-366 (WCB May 4, 2023). In the Public Notice, WCB also stated that AffordableConnectivity.gov and FCC.gov/ACP will continue to serve as resources providing detailed information about the ACP for consumers, digital navigators, and participating providers.

program."[5] The Spanish-language landing page for the ACP can be found at AccedeaInternet.gov.[6]

III. DISCUSSION

4. In this Order, we modify the Commission's rules to reflect an updated broadband label containing the new ACP landing page of "GetInternet.gov." We also make clear that, should a provider be required to display a Spanish version of the label, it must include the Spanish-language landing page for the ACP: AccedeaInternet.gov.[7] This change simply ensures the label contains accurate information; it does not involve any policy change. The updated label is displayed in the Appendix below.

5. We find good cause to make this rule change without notice and comment under section 553(b)(B) of the Administrative Procedure Act (APA).[8] Section 553(b)(B) of the APA provides exceptions to the notice and comment rulemaking procedures when, among other things, the agency finds good cause that the notice and comment requirements are "impracticable, unnecessary, or contrary to the public interest" with respect to the rule at issue.[9] We conclude that, in this case, the substitution of one Commission-supplied URL for a different Commission-supplied URL in broadband providers' labels is insignificant in its nature and impact on regulated entities and beneficial to the broader public by ensuring the use of a URL that serves the intended purpose of the label. The minimal practical significance of the change is particularly true here, given that compliance with the label is not yet required and providers will have ample implementation time (either six months or one year, depending on the size of the provider's subscriber base) following Federal Register publication of Office of Management and Budget approval and modification of the codified rule.[10] Similarly, it is in the best interest of providers that they know as early as possible what content must be displayed in the labels as they begin to create the labels. Accordingly, we find, for good cause, that it is "unnecessary," within the meaning of section 553(b)(B), to provide notice and an opportunity for public comment before implementing this rule revision.[11]

IV. PROCEDURAL MATTERS

6. *Regulatory Flexibility Act.* Because this rule change is being adopted without notice and comment, the Regulatory Flexibility Act[12] does not apply.

7. *Paperwork Reduction Act*. This document does not contain new or substantively

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[5] *Id.*

[6] The transition to the AccedeaInternet.gov Spanish language ACP landing page went live on May 17, 2023. *See* Universal Service Administrative Company, ACP – May 2023 Newsletter at 1-2 (June 1, 2023), https://www.usac.org/wp-content/uploads/about/documents/acp/ACP-May-2023-Newsletter.pdf; *see also* FCC, *Program de Descuentos para Internet* (last visited June 9, 2023).

[7] *See* 47 CFR § 8.1(a)(4) ("The label required under section 8.1(a)(1) must be provided in English and in any other languages in which the broadband internet access service provider markets its services in the United States.").

[8] 5 U.S.C. § 553(b)(3)(B) (notice and comment is not necessary "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

[9] 5 U.S.C. § 553(b)(B).

[10] *See* 47 CFR § 8.1(a)(7). We determine that this rule change does not involve new or substantively modified information collection requirements under the PRA. To the extent this rule change may involve non-substantive modifications to an information collection under the PRA, we will either: (1) include this rule change as part of the submission(s) of new or modified PRA information collections adopted by the Commission in the *Broadband Label Order*, FCC 22-86, for OMB review; or (2) separately submit it to OMB for approval pursuant to OMB's non-substantive modification process.

[11] *See, e.g.*, *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (notice and comment is "unnecessary" when "the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public").

[12] 5 U.S.C. § 601 *et seq.* *See id.* § 601(2).

modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

8. This document may contain non-substantive modifications to an information collection. Any such modifications will be submitted to the Office of Management and Budget (OMB) either (1) as part of the submission of PRA information collection requirements adopted by the Commission in the *Broadband Label Order*, FCC 22-86, for OMB review, or (2) separately pursuant to OMB's non-substantive modification process.

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

10. *Additional Information.* For more information, contact Erica H. McMahon, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at Erica.McMahon@fcc.gov or (202) 418-0346.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 4(j), 13, 201(b), 254, 257, 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 163, 201(b), 254, 257, 301, 303, 316, 332, section 60504 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (2021), section 904 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), as amended, section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(B), and section 0.361 of the Commission's rules, 47 CFR § 0.361, that this Order is **ADOPTED**, and that Part 8 of the Commission's rules, 47 CFR Part 8, **IS AMENDED** as set forth in the Appendix.

12. **IT IS FURTHER ORDERED** that this Order **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register. Compliance with this amendment to 47 CFR § 8.1(a)(1) will not be required until the later of: i) OMB approval of this amendment to 47 CFR § 8.1(a)(1) pursuant to OMB's non-substantive modification process; or ii) one year after OMB completes its review of any information collections resulting from amendments to 47 CFR § 8.1(a)(1) adopted by the Commission in FCC 22-86 that the Consumer and Governmental Affairs Bureau determines are subject to the Paperwork Reduction Act for providers with 100,000 or fewer subscribers **and** six months after OMB completes its review of any information collections resulting from amendments to 47 CFR § 8.1(a)(1) adopted by the Commission in FCC 22-86 that the Consumer and Governmental Affairs Bureau determines are subject to the Paperwork Reduction Act for all other providers. The Consumer and Governmental Affairs Bureau will announce compliance dates for the amendments to 47 CFR § 8.1(a)(1) by subsequent Public Notice and will cause 47 CFR § 8.1 to be revised accordingly.

13. **IT IS FURTHER ORDERED** that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of any aspect of this Order will commence on the date that a summary of this Order is published in the Federal Register.

14. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Evaluation and Records Management, **SHALL SEND** a copy of this Order in a report to be sent to Congress and to the Governmental Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark
Chief
Consumer and Governmental Affairs Bureau

APPENDIX

Final Rules

For the reasons discussed in the Order, the Federal Communications Commission amends 47 CFR part 8 as follows:

PART 8 – INTERNET FREEDOM

1. The Authority citation for Part 8 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 201(b), 257, 303(r), and the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (2021).

2. Section 8.1(a) is amended by revising paragraph (a)(1) as follows:

(a) * * *

(1) Any person providing broadband internet access service shall create and display an accurate broadband consumer label for each stand-alone broadband internet access service it currently offers for purchase. The label must be prominently displayed, publicly available, and easily accessible to consumers, including consumers with disabilities, at the point of sale with the content and in the format prescribed by the Commission in "[Fixed or Mobile] Broadband Consumer Disclosure," **[include revised label template below as Figure 1 to Paragraph (a)(1)]**

Broadband Facts

Provider Name

Service Plan Name and/or Speed Tier

Fixed or Mobile Broadband Consumer Disclosure

Monthly Price [$]

This Monthly Price [is/is not] an introductory rate. [if introductory rate is applicable, identify length of introductory period and the rate that will apply after introductory period concludes]

This Monthly Price [does not] require[s] a [x year/x month] contract. [only required if applicable; if so, provide link to terms of contract]

Additional Charges & Terms

Provider Monthly Fees [Itemize each fee]	[$]
One-time Fees at the Time of Purchase [Itemize each fee]	[$]
Early Termination Fee	[$]
Government Taxes	Varies by Location

Discounts & Bundles

Click Here for available billing discounts and pricing options for broadband service bundled with other services like video, phone, and wireless service, and use of your own equipment like modems and routers. [Any links to such discounts and pricing options on the provider's website must be provided in this section.]

Affordable Connectivity Program (ACP)

The ACP is a government program to help lower the monthly cost of internet service. To learn more about the ACP, including to find out whether you qualify, visit GetInternet.gov.

Participates in the ACP **[Yes/No]**

Speeds Provided with Plan

Typical Download Speed	[] Mbps
Typical Upload Speed	[] Mbps
Typical Latency	[] ms

Data Included with Monthly Price	[] GB
Charges for Additional Data Usage	[$/GB]

Network Management	**Read our Policy**
Privacy	**Read our Policy**

Customer Support

Contact Us: example.com/support / (555) 555-5555

Learn more about the terms used on this label by visiting the Federal Communications Commission's Consumer Resource Center.

fcc.gov/consumer

[Unique Plan Identifier Ex. F0005937974123ABC456EMC789]

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 23-78
Table of Allotments, Television Broadcast	)	RM-11946
Stations (Elko, Nevada)	)	
	)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: July 19, 2023 **Released: July 19, 2023**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking[1] issued in response to a Petition for Rulemaking filed by Reno (KENV-TV) Licensee, Inc. (Reno Licensee or Petitioner),[2] the licensee of television station KENV-DT (KENV-DT or Station), channel 10, Elko, Nevada. The Petitioner has requested the substitution of UHF channel 20 for VHF channel 10 in the Table of TV Allotments.[3] The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),[4] reaffirming its commitment to apply for channel 20.[5] No other comments were received.

2. We believe the public interest would be served by substituting channel 20 for channel 10 at Elko, Nevada. In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF poses challenges for stations providing digital television service on those channels due to propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and result in large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels.[6] According to the Petitioner, the Station "has received numerous complaints from local viewers who can receive signals from other local stations but are unable to receive the Station's over-the-air signal on Channel 10."[7] Thus, the Petitioner asserts that its channel substitution proposal will serve the public by resolving the over-the-air reception problems and enhancing viewer reception in the Station's service area.[8] An analysis conducted using the Commission's *TVStudy* software tool indicates that no persons within the Station's current noise

[1] *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Elko, Nevada)*, MB Docket No. 23-78, Notice of Proposed Rulemaking, DA 23-159 (rel. Mar. 1, 2023) (*NPRM*).

[2] Petition of Reno (KENV-TV) Licensee, Inc. for Rulemaking, (filed Jan. 9, 2023, LMS File No. 0000206515).

[3] 47 CFR § 73.622(j).

[4] 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

[5] Reno (KENV-TV) Licensee, Inc.. Comments at 1 (rec. Apr. 17, 2023) (Reno Licensee Comments).

[6] *NPRM* at para. 2 and n.2.

[7] *Id*. at para. 2.

[8] Reno Licensee Comments at 1-2.

limited contour will lose service and an additional 1,367 persons are predicted to gain service from the Station.[9]

3. As proposed, channel 20 can be substituted for channel 10 at Elko, Nevada, in compliance with the principal community coverage requirements of section 73.625(a) of the rules ,[10] at coordinates 40° 41' 58.8" N and 115° 54' 10.9" W. The Petitioner's proposal will serve the public interest as there is no loss of service. The channel substitution will resolve the over-the-air reception problems, enhance viewer reception in KENV-DT's service area, and provide new service to 1,367 persons not currently able to receive the Station.[11] In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:

City and State	Channel	Power (kW)	Antenna HAAT (m)	Service Pop.
Elko, Nevada	20	75	562.2	47,372

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.[12] An expedited effective date is necessary in this case to ensure that KENV-DT can operate with improved service to its viewers as quickly as possible.

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

City and State	Channel No.
Elko, Nevada	20

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Elko (KENV-TV) Licensee, Inc. shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 20.

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

8. **IT IS FURTHER ORDERED,** That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-78 and RM-11946 **SHALL BE TERMINATED** and its docket closed.

[9] *Id.*

[10] 47 CFR § 73.625(a).

[11] We do not give any weight to the Petitioner's arguments concerning ATSC 3.0 reception given the prospective nature of its claims and limited availability of consumer devices. *See NPRM* at n.4; Reno Licensee Comments at 2.

[12] 5 U.S.C. § 553(d)(3).

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-619
Released: July 19, 2023

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR AUGUST 10, 2023 SPENDING REPORT FILING OBLIGATION

WC Docket No. 18-89

By this Public Notice, the Wireline Competition Bureau (Bureau) reminds recipients[1] in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file reimbursement spending reports with the Federal Communications Commission (Commission) "[w]ithin 10 days after the end of January and July . . . starting with the recipient's initial draw down of reimbursement funds."[2] Accordingly, all recipients who have been notified of the approval of a reimbursement claim request must submit their next spending report by August 10, 2023. For additional information about Reimbursement Program spending report requirements, please refer to the *Initial Spending Report PN*.[3]

Recipients must submit their spending reports through the Supply Chain Reimbursement Program Online Portal, https://fccprod.servicenowservices.com/scrp by completing FCC Form 5640 Part L: Spending Reports. Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18-89 in the Commission's Electronic Comment Filing System (ECFS), https://www.fcc.gov/efcs.

[1] The Secure and Trusted Communications Networks Act of 2019, as amended, defines "recipient" as "any provider of advanced communications service the application of which for a reimbursement under the [Reimbursement] Program has been approved by the Commission, regardless of whether the provider has received reimbursement funds." Secure and Trusted Communications Act of 2019, Pub. L. No. 116-124, 134 Stat. 158, § 9(11) (2019) (codified as amended at 47 U.S.C. § 1608(11)), as amended by Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2021); *see also* 47 CFR § 1.50001(h) ("The term 'Reimbursement Program recipient' or 'recipient' means an eligible advanced communications service provider that has requested via application and been approved for funding in the Reimbursement Program, regardless of whether the provider has received reimbursement funds.").

[2] 47 C.F.R. § 1.50004(l)(1); *see also* Protecting *Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284, 14360, para 188 (2020).

[3] *Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of Their Spending Report Filing Obligation*, WC Docket No. 18-89, Public Notice, DA 23-24 (WCB Jan. 11, 2023).

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-

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

In the Matter of	)	
	)	
Facilitating Implementation of Next Generation 911 Services (NG911)	)	PS Docket No. 21-479
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: June 8, 2023 **Released: June 9, 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. In this Notice of Proposed Rulemaking, we propose to take steps that will advance the nationwide transition to Next Generation 911 (NG911).[1] Like communications networks generally, dedicated 911 networks are evolving from Time Division Multiplexing (TDM)-based architectures to Internet Protocol (IP)-based architectures. With the transition to NG911, 911 authorities will replace the circuit-switched architecture of legacy 911 networks with IP-based technologies and applications, which provide new capabilities and improved interoperability and system resilience. Most states have invested significantly in NG911, but some report that they are experiencing delays in providers connecting to these IP-based networks. As a result of these delays, state and local 911 authorities incur prolonged costs because of the need to maintain both legacy and IP networks during the transition. Managing 911 traffic on both legacy and IP networks may also result in increased vulnerability and risk of 911 outages.

2. In this proceeding, we propose to expedite the NG911 transition by adopting certain requirements that would apply to wireline, Commercial Mobile Radio Service (CMRS), interconnected Voice over Internet Protocol (VoIP), and Internet-based Telecommunications Relay Service (TRS) providers as state and local 911 authorities transition to IP-based networks and develop the capability to support NG911 elements and functions.

- First, we propose to require wireline, interconnected VoIP, and Internet-based TRS providers to complete all translation and routing to deliver 911 calls, including associated location information, in the requested IP-based format to an Emergency Services IP network (ESInet) or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have certified the capability to accept IP-based 911 communications. Wireline and interconnected VoIP providers would be subject to this requirement six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority, whichever is later. Internet-based TRS providers would be subject to this requirement twelve months from the effective date of the IP service delivery requirement, or twelve months after a valid request for IP-based service by a state or local 911 authority, whichever is later. This proposal is similar to that proposed for CMRS and covered text providers in our recent proceeding on wireless location-based routing.[2]
- Second, as state and local 911 authorities transition to IP-based networks, we propose to require wireline, interconnected VoIP, CMRS, and Internet-based TRS providers to transmit all 911 calls to destination point(s) in those networks designated by a 911 authority, including to a public safety answering point (PSAP), designated statewide default answering point, local emergency authority, ESInet, or other point(s) designated by 911 authorities that allow emergency calls to be answered, upon request of 911 authorities who have certified the capability to accept IP-based 911 communications.
- Third, we propose that in the absence of agreements by states or localities on alternative cost recovery mechanisms, wireline, interconnected VoIP, CMRS, and Internet-based TRS

[1] For purposes of this *Notice of Proposed Rulemaking*, we use the term Next Generation 911 (NG911) to refer generally to the digital Internet Protocol (IP)-based 911 systems that are replacing analog time division multiplexing (TDM) 911 infrastructure. We also seek comment on defining NG911 for purposes of our proposed rules in section III.A.4 below.

[2] *See Location-Based Routing for Wireless 911 Calls*, Notice of Proposed Rulemaking, PS Docket No. 18-64, FCC 22-96, 2022 WL 17958801, at *2, para. 4 (Dec. 22, 2022) (*Location-Based Routing NPRM*). The Commission defines the term "covered text provider" as including "all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones." 47 CFR § 9.10(q)(1).

providers must cover the costs of transmitting 911 calls to the point(s) designated by a 911 authority, including any costs associated with completing the translation and routing necessary to deliver such calls and associated location information to the designated destination point(s) in the requested IP-based format. Under this proposal, states and localities would remain free to establish alternative cost allocation arrangements with providers. However, in the absence of such arrangements, providers would be presumptively responsible for the costs associated with delivering traffic to the destination point(s) identified by the appropriate 911 authority.

3. Together, these proposals are intended to expedite the NG911 transition and help ensure that the nation's 911 system functions effectively and with the most advanced capabilities available. In addition, they respond to the petition filed in 2021 by the National Association of State 911 Administrators (NASNA)[3] urging the Commission to take actions to resolve uncertainty and disputes between originating service providers (OSPs)[4] and state 911 authorities regarding the NG911 transition. We seek to create a consistent framework for ensuring that providers (including wireline, CMRS, interconnected VoIP, and Internet-based TRS providers) take the necessary steps to implement the transition to NG911 capability in coordination with state and local 911 authorities. We also seek to align the NG911 transition rules for wireline, interconnected VoIP, and Internet-based TRS providers with similar requirements we have proposed for CMRS and covered text providers in the *Location-Based Routing NPRM*, thereby promoting consistency across service platforms. Finally, our demarcation point and cost allocation proposals seek to address what NASNA described in its Petition as "the critical component, and biggest regulatory roadblock, to transitioning to NG911 services."[5] We seek comment on the tentative conclusions, proposals, and analyses set forth in this *Notice of Proposed Rulemaking*, as well as on any alternative approaches.

II. BACKGROUND

4. 911 service is a vital part of our nation's emergency response and disaster preparedness system. Since the first 911 call was placed in 1968,[6] the American public increasingly has come to depend on 911 service. The National Emergency Number Association (NENA) estimates that some form of 911 service is available to over 98 percent of the population and to over 97 percent of the counties in the United States,[7] and data collected in our annual 911 fee report indicate that over 220 million calls are made to 911 in the United States each year.[8] The availability of this critical service is due largely to the dedicated efforts of state, local, and Tribal authorities and providers, who have used the 911 abbreviated dialing code to provide access to increasingly advanced and effective emergency service capabilities.[9]

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[3] Petition for Rulemaking; Alternatively, Petition for Notice of Inquiry, CC Docket No. 94-102, PS Docket Nos. 18-64, 18-261, 11-153, and 10-255 (filed Oct. 19, 2021), https://www.fcc.gov/ecfs/document/1019188969473/1 (NASNA Petition).

[4] NASNA and other commenters on NASNA's Petition use the term "originating service providers" to refer to all service providers that originate 911 calls and are subject to part 9 of our rules, including wireline, wireless, and interconnected Voice over Internet Protocol (VoIP) providers. *See, e.g.*, NASNA Petition at 2. For purposes of this *Notice of Proposed Rulemaking*, we use the term "originating service providers" (OSPs) to refer collectively to wireline, wireless, and interconnected VoIP providers, but not to other service providers covered by part 9 (e.g., telecommunications relay and mobile satellite services).

[5] NASNA Petition at 6.

[6] Federal Communications Commission (FCC), *911 and E911 Services*, https://www.fcc.gov/general/9-1-1-and-e9-1-1-services (last visited May 16, 2023).

[7] National Emergency Number Association (NENA), *9-1-1 Statistics*, https://www.nena.org/page/911Statistics (last visited May 16, 2023).

[8] FCC, Fourteenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 15, tbl. 3 (2022), https://www.fcc.gov/file/24628/download (Fourteenth Annual 911 Fee Report).

Indeed, absent funding for and appropriate action by states, Tribes, and local jurisdictions, there can be no effective 911 service.

A. 911 Implementation

5. *The Universal Emergency Number*. In 1999, Congress amended section 251(e) of the Communications Act of 1934, as amended (the Act), and directed the Commission to designate "911" as the nationwide abbreviated dialing code for contacting wireline and wireless voice services for public safety and emergency services.[10] In 2000, the Commission designated 911 as the national emergency telephone number to be used for reporting emergencies and requesting emergency assistance.[11] In 2001, the Commission established a period for wireline and wireless carriers to transition to routing 911 calls to a PSAP in areas where one had been designated or, in areas where a PSAP had not yet been designated, either to an existing statewide default point or to an appropriate local emergency authority.[12]

6. *Legacy 911 Call Routing*. For legacy E911 systems, 911 calls are routed through the use of a wireline network element—called a selective router—to a geographically appropriate PSAP based on the caller's location.[13] The selective router serves as the entry point for 911 calls from competitive and incumbent LEC central offices over dedicated trunks,[14] as well as 911 calls from wireless[15] and interconnected VoIP providers.[16] In legacy architecture, PSAPs are connected to telephone switches in the selective router by dedicated trunk lines.[17] Historically, the selective router and connecting trunk lines

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[9] *See Implementation of 911 Act; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WT Docket No. 00-110, CC Docket No. 92-105, Fourth Report and Order and Third Notice of Proposed Rulemaking, and Notice of Proposed Rulemaking, 15 FCC Rcd 17079, 17084, para. 9 (2000) (*911 Implementation Notice*).

[10] Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, § 3(a), 113 Stat. 1286, 1287 (911 Act) (codified at 47 U.S.C. § 251(e)(3)). The purpose of the 911 Act is to enhance public safety by encouraging and facilitating the prompt deployment of a nationwide, seamless communications infrastructure for emergency services that includes wireless communications. *911 Implementation Notice*, 15 FCC Rcd at 17081, para. 1 (citing 911 Act § 2(b)). The 911 Act further directs the Commission to encourage and support the states in developing comprehensive emergency communications throughout the United States so that all jurisdictions offer seamless networks for prompt emergency service. *Id*.

[11] *911 Implementation Notice*, 15 FCC Rcd at 17084-85, para. 11.

[12] *See Implementation of 911 Act; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WT Docket No. 00-110, CC Docket No. 92-105, Fifth Report and Order, First Report and Order, and Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 22264, 22293-95, App. B (2001). The Commission codified in former section 64.3001 the obligation of telecommunications carriers to transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority. *Id.* In addition, the Commission codified in former section 64.3002 the periods for transition to 911 as the universal emergency telephone number. *Id.* The Commission subsequently renumbered sections 64.3001 and 64.3002 as current sections 9.4 and 9.5, respectively. *Implementing Kari's Law and Section 506 of RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, PS Docket Nos. 18-261 and 17-239, GN Docket No. 11-117, Report and Order, 34 FCC Rcd 6607, 6742, App. B (2019) (*Kari's Law/RAY BAUM'S Act Order*), *corrected by* Erratum, DA 19-1217 (PSHSB Dec. 2, 2019), *also corrected by* Second Erratum, 87 Fed. Reg. 60104 (Oct. 4, 2022); *see* 47 CFR §§ 9.4 and 9.5.

[13] *See IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10251, 10252, paras. 13, 15 (2005) (*VoIP 911 Order*), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

[14] *Id.* at 10252, para. 15.

[15] *See id.* at 10252-53, para. 17.

[16] *See id.* at 10269, paras. 40-41.

[17] *See id.* at 10250-51, para. 12.

have been implemented, operated, and maintained by a subset of incumbent Local Exchange Carriers (LECs) and largely paid for by state or local 911 authorities through state tariffs or contracts.[18] Network implementation has varied from carrier to carrier and jurisdiction to jurisdiction, but legacy E911 has typically been based on traditional circuit-switched architecture and implemented with legacy components that place significant limitations on the functions that can be performed over the network.[19]

7. *Legacy Demarcation Point*. Although the Commission has not previously set a cost demarcation point for wireline, interconnected VoIP, and Internet-based TRS providers in the E911 environment, the Commission has set a demarcation point for purposes of the wireless transition to E911. Early in the implementation of E911 Phase I by wireless carriers, King County, Washington sought clarification of the demarcation point for costs in Phase I implementation.[20] In 2001, the Wireless Telecommunications Bureau (WTB) issued a decision (*King County Letter*) identifying the input to the 911 selective router maintained by the incumbent LEC as the "proper demarcation point" for allocating wireless E911 Phase I information delivery responsibilities and costs in instances when CMRS providers and 911 authorities could not agree on an appropriate demarcation point.[21] In 2002, the Commission issued an Order on Reconsideration (*King County Order on Reconsideration*) affirming WTB's decision and extending the demarcation point to include the delivery of wireless E911 Phase II information.[22] The Commission affirmed that for a wireless carrier to satisfy its obligation to provide Phase I information to the PSAP under section 20.18(d) (now section 9.10(d)), the wireless carrier must deliver and bear the costs to deliver E911 Phase I information to the equipment in the existing 911 system that "analyzes and distributes it," i.e., the 911 selective router.[23] The Commission also affirmed that PSAPs were required to bear Phase I costs for delivery beyond the 911 selective router.[24] Together, these decisions provided guidance to facilitate implementation of E911 in TDM networks. However, the Commission has not previously sought to address demarcation in the NG911 environment.

8. *Voice Over Internet Protocol*. With regard to interconnected VoIP, the Commission has recognized that consumers expected certain types of emerging voice technology to have the same ability to reach emergency services when dialing 911 as their traditional wireline and wireless services.[25] This recognition resulted in the 2005 *VoIP 911 Order*, in which the Commission imposed 911 service obligations on providers of interconnected VoIP.[26] The Commission declined to establish an E911

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[18] *Id.* at 10251, para. 14.

[19] *Id.* at 10252, para. 14.

[20] Letter from Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (May 25, 2000).

[21] Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, to Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, King County, Washington, 2001 WL 491934, at *1 (WTB May 7, 2001) (*King County Letter*) (clarifying that "wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router" and that "PSAPs . . . must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router").

[22] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request of King County, Washington*, CC Docket No. 94-102, Order on Reconsideration, 17 FCC Rcd 14789, 14789, 14793, paras. 1, 9-10 (2002) (*King County Order on Reconsideration*) (affirming the *King County Letter* on reconsideration and extending WTB's analysis to Phase II service).

[23] *King County Order on Reconsideration*, 17 FCC Rcd at 14790, 14792-93, paras. 4, 7-8.

[24] *See id*. at 14790-91, 14792-93, paras. 4, 7-8.

[25] *See, e.g.*, *VoIP 911 Order*, 20 FCC Rcd at 10247-48, paras. 4-5.

[26] *Id.* at 10246, 10256, paras. 1, 22; *see also* 47 CFR §§ 9.3 (defining *interconnected VoIP service*), 9.11-.12 (giving interconnected VoIP providers duties and rights with respect to provision of 911 service). The Commission later

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demarcation point for interconnected VoIP service, but it stated that "[t]o the extent that it becomes a concern, we believe that the demarcation point that the Commission established for wireless E911 cost allocation would be equally appropriate for VoIP."[27]

9. *911 Parity.* By 2008, Congress recognized that the nation's 911 system was "evolving from its origins in a circuit-switched world to an IP-based network"[28] and that for VoIP providers to fulfill their 911 service obligations to subscribers, they must have access to the same emergency services capabilities and infrastructure as other voice providers.[29] Congress passed the New and Emerging Technologies Improvement Act of 2008 (NET 911 Act) to facilitate the rapid deployment of VoIP 911 services and to, among other things, encourage the transition to a national IP-enabled emergency network.[30] The NET 911 Act extended critical 911 service-related rights, protections, and obligations to VoIP service providers,[31] and mandated parity for VoIP providers vis-à-vis other voice providers subject to 911 obligations with respect to the rates, terms, and conditions applicable to exercising their rights and obligations to provision VoIP 911 service.[32]

B. Transition to Next Generation 911

10. Like communications networks generally, 911 networks are evolving from TDM-based architectures to IP-based architectures. With the transition to NG911, the circuit-switched architecture of legacy 911 will eventually be entirely replaced by IP-based technologies and applications that provide all of the same functions as the legacy 911 system, as well as new capabilities. In its end state, NG911 will facilitate interoperability and system resilience, improve connections between 911 call centers, and support the transmission of text, photos, videos, and data.[33]

11. Congress has recognized the Commission's role in facilitating the transition to NG911.

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clarified that the 911 VoIP requirements extended to "outbound only" interconnected VoIP providers, that is, VoIP providers that permit users to initiate calls that terminate to the PSTN even if they do not also allow users to receive calls from the PSTN. *Kari's Law/RAY BAUM'S Act Order*, 34 FCC Rcd at 6670-71, 6675, paras. 174, 183. While section 615b uses the term "IP-enabled voice service," it defines this term as having the same meaning as "interconnected VoIP" in section 9.3 of the Commission's rules. 47 U.S.C. § 615b(8). We refer to both of these terms in this *Notice of Proposed Rulemaking* as "interconnected VoIP service" (and to providers of such a service as "interconnected VoIP providers") and in doing so intend to encompass all VoIP services subject to 911 obligations under part 9 of our rules, including providers of Internet Protocol Captioned Telephone Service (IP CTS), who are also the providers of the associated interconnected VoIP service. IP CTS is a form of Telecommunications Relay Service (TRS) "that permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet, rather than using a text telephone (TTY) and the public switched telephone network." 47 CFR § 64.601(a)(24). We also include other providers of Internet-based TRS, video relay service (VRS), and Internet Protocol Relay Service (IP Relay).

[27] *VoIP 911 Order*, 20 FCC Rcd at 10274, para. 53 n.164.

[28] *Implementation of the NET 911 Improvement Act of 2008,* Report and Order, WC Docket No. 08-171, 23 FCC Rcd 15884, 15893, para. 22 (*citing* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, Preamble, §102, 122 Stat. 2620 (2008) (NET 911 Act).

[29] *See* H.R. Rep. No. 110-442, at 6-7 (2007).

[30] NET 911 Act, Preamble.

[31] *Id.* §§ 101, 201(a).

[32] *Id.* § 101(2) (codified at 47 U.S.C. § 615a-1(b)).

[33] *See, e.g.*, City of New York Office of Technology & Innovation, 2022 Annual Report on Implementation of Next Generation 9-1-1 in NYC at 4 (2022), https://www.nyc.gov/assets/oti/downloads/pdf/reports/annual-report-next-generation-911-2022.pdf (listing the primary technical benefits of NG911); *see also* NENA, Why NG9-1-1 at 1-2 (2009), https://cdn.ymaws.com/www.nena.org/resource/resmgr/ng9-1-1_project/whyng911.pdf (identifying the purposes of NG911).

As part of the 2010 National Broadband Plan, the Commission recommended that Congress consider developing a new "legal and regulatory framework for development of NG911 and the transition from legacy 911 to NG911 networks."[34] Also in 2010, Congress enacted the Twenty-First Century Communications and Video Accessibility Act (CVAA), which authorized the Commission to implement regulations necessary to achieve reliable and interoperable communication that ensures access to an Internet Protocol-enabled emergency network by individuals with disabilities, where achievable and technically feasible.[35] In 2012, Congress enacted the Next Generation 9-1-1 Advancement Act of 2012 as part of the Middle Class Tax Relief and Job Creation Act of 2012 (NG911 Act), asking the Commission to prepare and submit a report to Congress on recommendations for the legal and statutory framework for NG911 services.[36] In 2013, the Commission submitted that report, recommending among other things that Congress 1) facilitate the exercise of existing authority over NG911 by certain federal agencies (including the Commission), and 2) consider enacting legislation that would ensure there is no gap between federal and state authority over NG911.[37] The Commission stated that "[t]he Commission already has sufficient authority to regulate the 911 and NG911 activity of, inter alia, wireline and wireless carriers, interconnected VoIP providers, and other IP-based service providers."[38]

12. The technological and regulatory landscape underlying 911 has evolved significantly since 2013. The Commission has adopted requirements for text-to-911, real-time text, wireless indoor location accuracy, and dispatchable location.[39] In addition, the Commission has updated 911 outage and reliability rules, including recognizing the role of covered 911 entities.[40] With respect to technology, E911 Phase II is now widely implemented,[41] and many state and local jurisdictions have deployed ESInets and taken other transitional steps towards NG911.[42] Although the NG911 transition remains ongoing and

[34] FCC, Connecting America: The National Broadband Plan, Recommendation 16.14 at 326 (2010), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (last visited May 16, 2023) (National Broadband Plan)

[35] Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat 2751 § 106(g) (2010) (CVAA) (codified at 47 U.S.C. § 615c(g)).

[36] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012), Title VI, Subtitle E, Next Generation 9-1-1 Advancement Act (NG911 Act) § 6509.

[37] FCC, Legal and Regulatory Framework for Next Generation 911 Services, Section 4.1.2.2 at 28-29 (2013), https://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0227/DOC-319165A1.pdf (last visited May 16, 2023) (2013 NG911 Framework Report).

[38] 2013 NG911 Framework Report, Section 4.1.2.2 at 28.

[39] *E.g.*, *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846 (2014); *Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission's Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, CG Docket No. 16-145, GN Docket No. 15-178, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568 (2016); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fourth Report and Order, 30 FCC Rcd 1259 (2015); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fifth Report and Order and Fifth Further Notice of Proposed Rulemaking, 34 FCC Rcd 11592 (2019); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Sixth Report and Order and Order on Reconsideration, 35 FCC Rcd 7752 (2020); *Kari's Law/RAY BAUM'S Act Order*, 34 FCC Rcd 6607.

[40] *E.g.*, *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Improving 911 Reliability; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 15-80, 13-75 and 04-35, Second Report and Order, FCC 22-88, 2022 WL 17100963 (Nov. 18, 2022).

[41] NENA, *9-1-1 Statistics*, https://www.nena.org/page/911Statistics (last visited May 16, 2023).

[42] According to the most recent National 911 Annual Report, 2,287 PSAPs reported using an ESInet across 47 states in 2021, nearly a 5% increase from the 2020 data. National 911 Program, National 911 Annual Report, 2021 Data at

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there are no fully enabled NG911 systems yet operating,[43] the technical architecture of NG911 systems has been developed in detail and is well-established.[44]

13. *NASNA Petition*. On October 19, 2021, NASNA filed a petition asking the Commission to initiate a rulemaking or notice of inquiry to facilitate the transition to NG911 (NASNA Petition).[45] Specifically, NASNA asked the Commission to assert authority over the delivery of 911 communications by OSPs to ESInets and to amend the rules as needed to advance the transition to NG911.[46] As part of its petition, NASNA urged the Commission to set a default demarcation point in the NG911 environment analogous to its *King County* ruling in the E911 environment.[47] NASNA also asked the Commission to set deadlines for OSPs to begin delivering 911 traffic in NG911 format when the relevant state or local 911 authority achieves NG911 readiness, and to establish a registry through which 911 authorities would notify OSPs of their NG911 readiness status.[48] The Public Safety and Homeland Security Bureau (PSHSB or Bureau) placed the Petition on public notice on December 17, 2021, and received twenty-two comments, eight replies, and seven *ex partes*.[49]

14. *Wireless Location-Based Routing*. In December 2022, we issued the *Location-Based Routing NPRM* proposing to require CMRS and covered text providers to implement location-based routing for 911 calls and texts nationwide.[50] As part of that proceeding, we proposed to require CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in IP format upon request of 911 authorities who have established the capability to accept NG911-compatible IP-based 911 communications.[51] In addition, we proposed rules to establish time frames for CMRS and covered text providers to deliver IP-based traffic.[52] Further, we sought comment on whether to make available a registry or database that would allow state and local 911 authorities to notify CMRS and covered text

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8, 60, 64 (2023), https://www.911.gov/assets/2021-911-Profile-Database-Report_FINAL.pdf (National 911 Annual Report).

[43] Association of Public-Safety Communications Officials-International, Inc. (APCO) Comments at 1-2 (rec. Jan. 19, 2022) (APCO Comments) ("ECCs should be able to receive, process, and share appropriate information with responders in the field and with other ECCs in a secure and fully interoperable fashion [but] no part of the country can be described as having achieved this vision of NG9-1-1 with end-to-end broadband communications for ECCs."); *see also* APCO, APCO International's Definitive Guide to Next Generation 9-1-1 at 9 (2022), https://www.apcointl.org/ext/pages/APCOng911Guide/APCO_NG911_Report_Final.pdf (noting that comprehensive, end-to-end NG911 "does not yet exist anywhere in the country").

[44] *See* Task Force on Optimal PSAP Architecture (TFOPA), Adopted Final Report (2016), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_FINALReport_012916.pdf (TFOPA Final Report).

[45] NASNA Petition at 1.

[46] *Id*. at 2, 4-5.

[47] *Id.* at 2-3, 5-7.

[48] *Id*. at 3, 7-8.

[49] *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking Filed by the National Association of State 911 Administrators*, CC Docket No. 94-102 and PS Docket Nos. 21-479, 18-261, 18-64, 11-153, and 10-255, Public Notice, 36 FCC Rcd 17805 (PSHSB 2021), https://www.fcc.gov/document/pshsb-seeks-comment-nasna-petition-rulemaking (*Public Notice*). Comments, replies, and *ex partes* in this proceeding may be viewed in the Commission's Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2221-479%22)).

[50] *Location-Based Routing NPRM* at *1, para. 1 & n.1.

[51] *Id*. at *2, *15, paras. 4, 46.

[52] *Id.* at *16, para. 50.

providers of the 911 authorities' readiness to accept IP-based communications.[53] These proposals, if adopted, would effectively implement a key element of NASNA's petition with respect to transition to NG911 for wireless 911 calls and texts, which represent an estimated 80 percent[54] of 911 traffic in many areas.[55]

III. DISCUSSION

15. To achieve the transition to NG911, state and local 911 authorities must implement IP-based technologies and applications that will provide all of the same functions as the legacy E911 system as well as new capabilities. NG911 relies on IP-based architecture to provide an expanded array of emergency communications services that encompass both the core functionalities of legacy E911 and additional functionalities that take advantage of the enhanced capabilities of IP-based devices and networks.[56] In addition to handling 911 calls from wireline, CMRS, interconnected VoIP, and Internet-based TRS providers, NG911 networks can receive text, data, and video communications from any communications device via IP-based networks.[57] They can also be configured to receive machine-generated data from telematics applications (e.g., automatic collision notification systems in vehicles), medical alert systems, and sensors and alarms of various types.[58] NG911 architecture also supports enhanced flexibility and resiliency in network design, because it does not require system components to be in close geographic proximity to each PSAP and because it provides multiple alternatives for rerouting emergency communications to avoid congestion or outages.[59]

16. The transition to NG911 involves fundamental changes in the technology that 911 authorities use to receive and process 911 calls, and calls for equally fundamental changes in the way that wireline, CMRS, interconnected VoIP, and Internet-based TRS providers deliver such calls to PSAPs. First, in NG911 architecture, PSAPs receive incoming calls by means of ESInets, which are IP-based networks that replace the selective routers and telephone trunk lines used in legacy 911.[60] Second, NG911 is configured to receive and process 911 calls in a specific IP-based format, with all information needed to route the call and locate the caller embedded in IP data packets that control call initiation and set-up.[61] This means that as part of the transition to NG911, wireline, CMRS, interconnected VoIP, and Internet-based TRS providers will need to configure 911 calls in IP format that is compatible with NG911

[53] *Id.* at *17, para. 52.

[54] NENA, *9-1-1 Statistics*, https://www.nena.org/page/911Statistics (last visited May 16, 2023).

[55] The *Location-Based Routing NPRM* did not propose rules for wireline, interconnected VoIP, and Internet-based TRS providers. In the instant *Notice*, we reference some comments received in response to the *Location-Based Routing NPRM* with respect to CMRS providers that could be relevant to our proposals for wireline, interconnected VoIP, and Internet-based TRS providers here. However, we intend to address the specific proposals made in the *Location-Based Routing NPRM*, including IP delivery of 911 calls and texts for CMRS and covered text providers, as part of that proceeding.

[56] *Framework for Next Generation 911 Deployment*, PS Docket No. 10-255, Notice of Inquiry, 25 FCC Rcd 17869, 17877, para. 18 (2010) (*NG911 NOI*).

[57] 2013 NG911 Report, Section 3.1.2 at 10.

[58] *Id.*

[59] *Id.* at 11.

[60] *NG911 NOI*, 25 FCC Rcd at 17878, para. 20. ESInets may be established at the statewide or regional level to serve multiple PSAPs. *Id.* at 17878, para. 20 n.52.

[61] Task Force on Optimal PSAP Architecture (TFOPA), Adopted Final Report at 38, fig. 4-1 (2016), https://www.fcc.gov/document/fcc-releases-tfopa-final-report (TFOPA Final Report); NENA, NENA i3 Standard for Next Generation 9-1-1 at 37-41 (Oct. 7, 2021), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/nena-sta-010.3b-2021_i3_stan.pdf (NENA i3 Standard for NG911) (describing the SIP methods required for an NG911 call); Verizon Comments at 2.

call processing specifications and deliver the calls to new destination points in the IP-based networks established by 911 authorities.

17. Because these changes to 911 call formatting and delivery will take time and may not be implemented uniformly by all service providers, NG911 architecture provides for transitional network components to enable delivery of legacy 911 calls to ESInets during the transition.[62] These include legacy network gateways,[63] which convert TDM 911 calls to IP, and ESInet entry points that accept IP-based 911 calls that do not include all of the call processing information required for end-state NG911. These transitional components are important to ensuring continued delivery of legacy 911 calls until the NG911 transition is complete, at which point the transitional components can and will be decommissioned. However, maintaining legacy gateways and other transitional components adds to the cost of the NG911 transition, and these costs may be compounded significantly when the transition is impeded or delayed.

18. Most states have already made significant commitments to implementing NG911.[64] Forty-one states and jurisdictions reported to the FCC in 2022 that they had ESInets operating in 2021.[65] Despite investments in these new capabilities, commenters allege that some providers are delaying or refusing to connect to new NG911 networks.[66] Disputes with providers include issues of both cost allocation and the points to which carriers must deliver 911 traffic.[67] The general availability of state-level cost recovery for legacy wireline traffic appears to be an additional complicating factor.[68] These disputes are widespread and impact 911 networks in several states across the nation.[69] As a result, commenters allege that 911 authorities have incurred substantial costs to support legacy networks—including state-provided cost recovery for legacy 911 services and the maintenance of legacy gateways and selective routers—simultaneously with bearing the costs to deploy and support new NG911

[62] *See id.* at 17878, para. 20.

[63] TFOPA defines a "legacy network gateway" as "[a]n NG9-1-1 Functional Element that provides an interface between an un-upgraded legacy origination network and the [Next Generation 9-1-1 Core Services]." TFOPA, Working Group 2 Phase II Supplemental Report: NG9-1-1 Readiness Scorecard at 100 (2016), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_WG2_Supplemental_Report-120216.pdf (TFOPA NG9-1-1 Readiness Scorecard).

[64] Forty-three states, the District of Columbia, Guam, and Puerto Rico reported expenditures on NG911 programs in calendar year 2021. Fourteenth Annual Fee Report at 3. The total amount of reported NG911 expenditures in 2021 was $419,801,018.67. *Id.*

[65] Fourteenth Annual 911 Fee Report at 3. For calendar year 2021, twenty-four states and jurisdictions reported having statewide ESInets; nineteen reported having regional ESInets within the state; and eleven reported local-level ESInets. Fourteenth Annual 911 Fee Report at 3. It is possible that these numbers increased since states and jurisdictions submitted information to the Bureau. *See* National 911 Annual Report at 8 (noting that in 2021, 47 states reported deployment of an ESInet).

[66] Minnesota Department of Public Safety Comments at 1 (rec. Jan. 19, 2022) (Minnesota Dept. of Public Safety Comments); Pennsylvania Emergency Management Agency Comments at 4-5 (rec. Jan. 19, 2022) (Pennsylvania Emergency Mgmt. Agency Comments).

[67] *See, e.g.*, Pennsylvania Emergency Mgmt. Agency Comments at 4 ("One ILEC is requesting that Pennsylvania build the network all the way out to their switch(es) and that [Pennsylvania Emergency Mgmt. Agency], or Pennsylvania's NG911 system service provider assume all costs associated with this effort.").

[68] *See, e.g.*, Minnesota Dept. of Public Safety Comments at 1 (noting that OSPs who receive cost recovery have been unwilling to interconnect to the 911 ingress points identified by the state).

[69] Comtech Telecommunications Corp. (Comtech) Comments at 7 (rec. Jan. 19, 2022) (Comtech Comments) ("Comtech has been pulled into nearly identical POI disputes with OSPs in every state and region in which it has participated in NG911 deployments, which consistently result in deployment delays and increased costs for 911 Authorities to carry disputing OSPs' customers 911 traffic to the NG911 system.").

networks.[70] These ongoing costs impact the ability of states and localities to implement the transition to NG911 in a timely and cost efficient manner.[71] Commenters on the NASNA Petition indicate that, as part of the transition to NG911, it is important to decommission legacy routers and transition to IP-based infrastructure.[72]

19. In this *Notice of Proposed Rulemaking*, we propose to add a new subpart J to our part 9 rules that would define the requirements that apply to wireline, CMRS, interconnected VoIP, and Internet-based TRS providers as state and local 911 authorities transition to NG911. We discuss the specific elements of these proposals below.

1. Delivery in IP-Based Format

20. *IP Service Delivery*. In its Petition, NASNA urges us to assist with the transition to NG911 by, among other things, amending the Commission's rules to "specifically address NG911, including the standardized requirements associated with NG911 (*e.g.*, Session Initiation Protocol [SIP] format and provide location information attached to the SIP header of the call using Presence Information Data Format Location Object [PIDF-LO])."[73] Comments in response to the NASNA Petition show broad support for the Commission to take action to assist with the transition to NG911.[74] Some commenters contend that without a clear regulatory framework, 911 authorities in various stages of NG911 deployment will incur increased costs related to legacy cost recovery and the maintenance of legacy gateways and selective routers.[75] Commenters also note that continued delay in transitioning to NG911 means that public safety entities may not fully realize the benefit of their investments in NG911 and that

[70] Travis Jensen Reply at 1 (rec. Jan. 21, 2022) (filed on behalf of Arizona Department of Administration 9-1-1 Program Office) (Arizona Dept. of Administration Reply) (The Arizona Dept. of Administration is "currently facing challenges with the legacy 9-1-1 services and originating service providers (OSPs) that will cause additional unforeseen costs."); Letter from A. Keith Godwin, 9-1-1/Communications Section Chief, Alachua County (FL) 911/Communications (Alachua County) to FCC, PS Docket No. 21-479, at 1 (filed Feb. 9, 2022) (Alachua County *Ex Parte*) ("Florida has twenty-nine rural counties and some may never fully transition to NG-911 services if a county must continue to pay a LEC for legacy services while simultaneously paying for NG-911 services."); Pennsylvania Emergency Mgmt. Agency Comments at 4 ("[Pennsylvania Emergency Mgmt. Agency] is currently experiencing difficulties in this process that may impact Pennsylvania's transition to NG911 service and extend the period of time 911 authorities are paying for both legacy and NG911 services at the same time."); Comtech Reply at 5-6 (rec. Feb. 3, 2022) (Comtech Reply) ("PSAPs and 911 Authorities are forced to continue paying for existing Legacy 911 services . . . until all OSPs have migrated callers off the Legacy 911 Network.").

[71] Pennsylvania Emergency Mgmt. Agency Comments at 4; Arizona Dept. of Administration Reply at 1 (stating that migrating OSPs is "becoming a significant impediment to the NG911 transition in Arizona"); Alachua County *Ex Parte* at 1.

[72] Iowa Department of Homeland Security and Emergency Management Comments at 2 (rec. Jan. 18, 2022) (Iowa Dept. of Homeland Security and Emergency Mgmt. Comments); Minnesota Dept. of Public Safety Comments at 1.

[73] NASNA Petition at 4-5.

[74] NENA: The 9-1-1 Association Comments at 1 (rec. Jan. 19, 2022) (NENA Comments); NTCA – The Rural Broadband Association Comments at 2 (rec. Jan. 19, 2022) (NTCA Comments); South Carolina Telephone Coalition Comments at 5 (rec. Jan. 19, 2022) (South Carolina Telephone Coalition Comments); Boulder Regional Emergency Telephone Service Authority Comments at 1 (rec. Jan. 19, 2022) (BRETSA Comments); Nebraska Public Service Commission Comments at 2 (rec. Jan. 19, 2022) (Nebraska Public Service Comm. Comments); APCO Comments at 1; Arizona Dept. of Administration Reply at 1-2; Pennsylvania Emergency Mgmt. Agency Comments at 2; Colorado Public Utilities Commission Comments at 3 (rec. Jan. 14, 2022) (Colorado Public Utilities Comm. Comments); Comtech Comments at 2, 4, 6-7.

[75] NENA Reply at 1-2 (rec. Feb. 3, 2022) (NENA Reply); Arizona Dept. of Administration Reply at 1; Pennsylvania Emergency Mgmt. Agency Comments at 4; Comtech Comments at 4-5.

consumers may be unable to access the improved capabilities of NG911 services.[76]

21. Today, we propose to require wireline, interconnected VoIP, and Internet-based TRS providers to deliver IP-based 911 traffic under a similar framework to that proposed for CMRS and covered text providers in the *Location-Based Routing NPRM*. Specifically, we propose to require wireline, interconnected VoIP, and Internet-based TRS providers to complete all translation necessary to deliver 911 calls, including associated location information, in the requested IP-based format to an ESInet or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have established the capability to accept NG911-compatible, IP-based 911 communications. We seek comment on this proposal.

22. We believe that this proposal would help jurisdictions that are seeking to implement NG911 because requiring wireline, interconnected VoIP, and Internet-based TRS providers to deliver IP-formatted calls and accompanying call set-up and location information would alleviate the burden on state and local 911 authorities of maintaining transitional gateways and other network elements to process and convert legacy calls.[77] The Task Force on Optimal PSAP Architecture (TFOPA), a federal advisory committee, concluded in 2016 that a significant impediment to NG911 service was that originating service providers were not prepared to deliver 911 calls via IP technology with location information to NG911 service providers.[78] Some 911 authorities contend that the use of legacy technology by carriers continues to impede state and local jurisdictions as they attempt to transition to NG911.[79] Although some carriers are already delivering IP-based traffic voluntarily to NG911-capable PSAPs, so long as any providers continue to deliver 911 calls and routing information in legacy format, 911 authorities must fund and operate transitional technology to receive, translate, and process such calls within the NG911 system. We seek comment on the degree to which funding and operating transitional facilities extend the timeline and add to the cost incurred by state and local 911 authorities to transition to NG911. In addition, we seek comment and specific data on the benefits that the public would derive from our proposal, as well as on the costs to wireline, interconnected VoIP, and Internet-based TRS providers to deliver calls in IP-based format when a state or local 911 authority has requested it. In particular, with respect to these costs to wireline, interconnected VoIP, and Internet-based TRS providers, we seek comment on the kinds of costs that would be associated with transport and transit of these calls in IP format from originating providers to an ESInet or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities.[80] We also seek comment on whether and to what degree these costs differ depending on where and how the call is routed and delivered.[81] To the extent that commenters identify cost differences, we invite commenters to discuss options to mitigate such cost variations and to identify steps the Commission should take to optimize the delivery and processing of 911 calls via IP upon request of 911 authorities.

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[76] *See* APCO Comments at 7.

[77] Pennsylvania Emergency Mgmt. Agency Comments at 4-5 ("[Pennsylvania Emergency Mgmt. Agency] is currently experiencing difficulties in this process that may impact Pennsylvania's transition to NG911 service and extend the period of time 911 authorities are paying for both legacy and NG911 services at the same time.").

[78] TFOPA Final Report at 37.

[79] *E.g.*, Arizona Dept. of Administration Reply at 1 ("[Arizona Dept. of Administration] is currently facing challenges with the legacy 9-1-1 services and originating service providers (OSPs) that will cause additional unforeseen costs, becoming a significant impediment to the migration of NG9-1-1 for the 9-1-1 callers in Arizona."); Pennsylvania Emergency Mgmt. Agency Comments at 4-5.

[80] *See* Letter from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No 21-479, at 3 (filed May 30, 2023) (NTCA *Ex Parte*) (requesting that the Commission seek comment on the types of costs that providers could incur). For further discussion of estimated costs under the proposed rules, see Section III.F below.

[81] *Id.*

23. We also believe this proposal would complement our pending proposal in the *Location-Based Routing NPRM* to require CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in IP-based format upon request of 911 authorities who have established the capability to accept NG911-compatible IP-based 911 communications.[82] Although CMRS providers originate 75 to 80 percent of 911 calls in the U.S., successful implementation of NG911 for all 911 calls cannot occur without similar steps being taken by wireline, interconnected VoIP, and Internet-based TRS providers. Therefore, we propose that wireline, interconnected VoIP, and Internet-based TRS providers should be subject to similar requirements to deliver 911 communications in IP-based format to those we have proposed for CMRS and covered text providers. We seek comment on this approach. Should we seek to achieve regulatory parity in our requirements for delivery of IP-based 911 calls by CMRS, wireline, interconnected VoIP, and Internet-based TRS providers, or are there reasons to apply different requirements to calls from different platforms?

24. We seek comment on how to ensure that our proposal to require delivery of 911 calls in IP-based format would support interoperability in the NG911 environment, *i.e.*, the ability to transfer 911 calls and related data from one PSAP to another or from one ESInet to another. Are there other elements of interoperability we should consider in the NG911 environment?[83] What are the current roles of originating service providers and PSAPs in ensuring interoperability?[84] What interoperability issues occur at the demarcation point and how would commenters define the roles and responsibilities of originating service providers, PSAPs and 911 authorities, and NG911 service providers with respect to interoperability? Are there potential interoperability risks for PSAPs or 911 authorities associated with a requirement to deliver information in an IP-based format?[85] If so, what are those risks and what steps should we take to address them? Should we specify that the IP-based format requested by 911 authorities and delivered by originating providers must meet specified criteria to support interoperability, e.g., by including a requirement that the format conform to commonly accepted standards? We seek comment on the various costs for testing connections and resolving compatibility issues with IP-based interfaces and the parties currently responsible for those costs.[86] Are there standards for testing equipment and system functions and interactions to ensure compatibility and interoperability? Are there other requirements or conditions we should apply to eliminate impediments to interoperability and support seamless transfer of 911 calls and data?[87] Should we specify that originating service providers' obligations to deliver calls in an IP-based format extend to the new communication formats expected for NG911, such as photos and video?[88]

25. We also seek comment on how our proposal should extend to 911 calls that originate on

[82] *Location-Based Routing NPRM* at *2, *6, *15-*16, paras. 3-4, 17, 46-49.

[83] *See* Letter from Jeffery S. Cohen, Chief Counsel, APCO, Mark S. Reddish, Senior Counsel, APCO, and Alison P. Venable, Government Relations Counsel, APCO, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21-479, at 1 (filed June 1, 2023) (APCO *Ex Parte*) (requesting that the Commission seek comment on how interoperability should be defined and relative responsibilities for ensuring interoperability).

[84] *Id.*

[85] *See* APCO Comments at 7 ("The Commission must fully consider whether requiring originating service providers to deliver in an IP-based format will be helpful for solving interoperability problems among ECCs or whether, given the current environment of proprietary solutions and substantial interoperability challenges, this risks making the situation worse by further entrenching the problems.").

[86] *See* APCO *Ex Parte* at 1 (requesting that the Commission seek comment on responsibilities for ensuring interoperability).

[87] APCO Comments at 4, PS Docket No. 18-64 (rec. Feb. 16, 2023).

[88] *See* APCO *Ex Parte* at 2 (requesting that the Commission seek comment on whether the proposed NG911 obligations extend to requests for emergency assistance that are not voice calls, e.g., photos and video, and responsibilities for ensuring interoperability).

non-IP wireline networks. While the Commission has, for the last decade, encouraged providers to transition to all-IP networks,[89] some wireline carriers continue to use TDM switching facilities for voice traffic within portions of their networks.[90] We note that our proposed rule would not require TDM-based carriers to originate 911 calls in IP-based format on their own networks. However, it would require such calls to be converted to IP-based format for delivery to the ESInet or other designated point(s) once a 911 authority has made a valid request to receive IP-formatted calls. We seek comment on this proposal. Should we instead take steps to require that wireline, interconnected VoIP, and Internet-based TRS providers originate all 911 traffic in IP format? What would be the costs and benefits associated with this proposal? Alternatively, should we limit our requirement for wireline, interconnected VoIP, and Internet-based TRS providers to deliver 911 traffic in IP format to providers that originate 911 calls in IP? How would such a limitation impact the costs and benefits of our proposal? If providers fail to include appropriately formatted routing information, should those providers be responsible for additional costs beyond the points discussed in section III.A.2? We also seek comment on the costs specifically associated with originating providers' conversion of 911 voice traffic from TDM to IP.[91] In that connection, we invite commenters to recommend approaches for addressing cost issues associated with conversion of 911 voice traffic from TDM to IP as those costs are more precisely identified.

26. We also seek comment on how we should extend our proposed requirement to Internet-based TRS, which includes IP CTS, VRS, and IP Relay.[92] How would Internet-based TRS services implement our proposal if adopted? We note that we do not propose similar requirements for TTY-based TRS providers. Should we exclude from the proposed requirements Internet-based TRS providers who rely completely on their customers' underlying voice service providers to handle emergency call set-up

[89] *Call Authentication Trust Anchor*, Notice of Inquiry, WC Docket No. 17-97, FCC 22-81, 2022 WL 16634852, at *15 (citing *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Report and Order, 35 FCC Rcd 12425 (2020) (relieving incumbent local exchange carriers of various unbundled network and avoided-cost resale requirements); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, 33 FCC Rcd 5660 (2018) (streamlining the discontinuance process for technology transitions); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11142, para. 33 (2017) (streamlining the copper retirement process); *Technology Transitions et al.*, GN Docket No. 13-5, WC Docket No. 13-3, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8304-8305, paras. 64-65 (2016) (adopting the adequate replacement test); *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1435, para. 1 (2014) (seeking proposals for service-based experiments in connection with technology transitions)).

[90] NTCA, 2022 Broadband/Internet Availability Survey Report at 4 (Dec. 2022), https://www.ntca.org/sites/default/files/documents/2022-12/2022%20Broadband%20Survey%20Report%20%28FINAL%2011-28-22%29.pdf (NTCA 2022 Broadband Survey Report) (Just over one-half of respondents (53.4%) to NTCA's 2022 Broadband Survey Report still use TDM switching facilities for voice traffic within some portion of their ILEC networks.).

[91] *See* NTCA *Ex Parte* at 4 (requesting that the Commission seek comment on the types of costs that providers could incur). For further discussion of estimated costs under the proposed rules, see Section III.F below.

[92] IP CTS is a form of Telecommunications Relay Service (TRS) "that permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet, rather than using a text telephone (TTY) and the public switched telephone network." 47 CFR § 64.601(a)(24). VRS allows people who use sign language to communicate with voice telephone users with video equipment. A VRS user signs to a communications assistant (CA) who voices the information to the hearing party. *See* 47 CFR § 64.601(a)((51) (definition of VRS). IP Relay allows people with hearing and speech disabilities to communicate with text using an IP-enabled device over the Internet rather than a TTY and the PSTN. *See* 47 CFR § 64.601(a)(24) (definition of IP Relay). Current E911 requirements for VRS and IP Relay are set forth in section 9.14(d) and for covered IP CTS in section 9.14(e). 47 CFR § 9.14(d), (e).

and routing?[93] In such cases, it may not be necessary to impose requirements on the Internet-based TRS provider if the underlying service provider is subject to the relevant NG911 requirements.[94] Should covered IP CTS be subject to separate rules, as under the current part 9 rules?[95] Does extending our proposed requirement to Internet-based TRS raise any issues not considered above? What are the benefits and costs associated with the application of our proposal to Internet-based TRS? Are there any other providers that we should require to deliver IP-based 911 services?

2. Delivery Points and Cost Allocation for IP-Based 911 Calls

27. Next, we turn to the location(s) to which wireline, CMRS, interconnected VoIP, and Internet-based TRS providers should deliver 911 traffic in an NG911 environment, as well as whether to establish a default mechanism for allocating the costs associated with delivering NG911 traffic to such delivery points. Comments received in response to the *Public Notice* indicate significant disputes have arisen regarding the obligations for delivery of 911 calls in some states and localities that have implemented components of NG911.[96] These disputes concern the points to which providers should deliver 911 calls,[97] as well as which parties should bear the responsibility for the cost to deliver 911 traffic to those points.[98] Public safety commenters assert that these disputes have resulted in delays and costs to public safety that impact the transition to NG911 in states across the country.[99]

28. *Delivery Points for IP-Based 911 Traffic*. To address concerns about the points to which 911 traffic should be delivered as 911 authorities transition to NG911, we propose to require wireline, CMRS, and interconnected VoIP providers to transmit all 911 calls to the point(s) designated by the 911

[93] *See Kari's Law/RAY BAUM'S Act Order,* 34 FCC Rcd at 6688-89, para. 213 (clarifying that "these requirements do not apply to TTY-based TRS providers, or to Internet-based TRS providers who completely rely on their customers' underlying voice service providers to handle emergency call set-up, routing, and provision of location information").

[94] *Id.*

[95] 47 § 9.14(e).

[96] *E.g.*, NENA Comments at 2 ("The record already reflects the widespread occurrence and substantial impact from demarcation-caused delays in deployment and provision of NG9-1-1."); Comtech Comments at 7 (discussing "nearly identical POI disputes with OSPs in every state and region in which it has participated in NG911 deployments, which consistently result in deployment delays and increased costs for 911 Authorities to carry disputing OSPs' customers 911 traffic to the NG911 system"); Arizona Dept. of Administration Reply at 1 ("[Arizona Dept. of Administration] is currently facing challenges with the legacy 9-1-1 services and originating service providers (OSPs) that will cause additional unforeseen costs, becoming a significant impediment to the migration of NG9-1-1 for the 9-1-1 callers in Arizona."); Pennsylvania Emergency Mgmt. Agency Comments at 4-5 ("Based on Pennsylvania's experiences to date, the lack of a defined cost demarcation point and regulatory framework will delay or even threaten the full end state implementation of NG911.").

[97] *E.g.*, Arizona Dept. of Administration Reply at 1 ("Several Independent Local Exchange Carriers (ILECs) have indicated that they do not have an obligation to terminate their 9-1-1 traffic to the points of interconnection (POIs) as designated by [Arizona Dept. of Administration]."); South Carolina Telephone Coalition Comments at 2 (stating that NG911 service providers should be responsible for providing points of interconnection within the ILEC service areas).

[98] *E.g.*, Pennsylvania Emergency Mgmt. Agency Comments at 4 ("One ILEC is requesting that Pennsylvania build the network all the way out to their switch(es) and that [Pennsylvania Emergency Mgmt. Agency], or Pennsylvania's NG911 system service provider assume all costs associated with this effort."); South Carolina Telephone Coalition Comments at 2.

[99] Arizona Dept. of Administration Reply at 1; Pennsylvania Emergency Mgmt. Agency Comments at 4-5; Alachua County *Ex Parte* at 1 ("Florida has twenty-nine rural counties and some may never fully transition to NG-911 services if a county must continue to pay a LEC for legacy services while simultaneously paying for NG-911 services.").

authority that allow emergency calls to be answered six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority,[100] whichever is later. We also propose to require Internet-based TRS providers to transmit all 911 calls to the point(s) designated by the 911 authority that allow emergency calls to be answered twelve months from the effective date of the IP service delivery requirement, or twelve months after a valid request for IP-based service by a state or local 911 authority, whichever is later. Under this proposal, the delivery point(s) that could be designated by the 911 authority would include a PSAP, designated statewide default answering point, appropriate local emergency authority, ESInet, or other designated point(s) that allow emergency calls to be answered. This would make clear that the 911 authority may select an ESInet or other designated points on its IP-based network as the point(s) to which wireline, CMRS, interconnected VoIP, and Internet-based TRS providers must deliver 911 traffic. It would also clarify that 911 authorities determine and designate the point(s) to which 911 calls should be transmitted.

29. We believe our proposal would help to resolve disputes regarding the point(s) to which wireline, CMRS, interconnected VoIP, and Internet-based TRS providers must deliver 911 traffic in order to meet their obligations in an NG911 environment. Despite the progress many states have achieved towards implementing NG911,[101] public safety commenters indicate that it can be difficult to reach agreement with providers on connections to new NG911 networks.[102] Public safety commenters report lengthy negotiations for providers to connect to ESInets and contend that issues related to delivery of 911 calls have been a significant contributing factor.[103] Comtech asserts that delivery of 911 traffic to NG911 networks has been an issue "in every state and region in which it has participated in NG911 deployments."[104] Some small and rural wireline carriers argue that 911 delivery points should be within service providers' local service areas,[105] and oppose rules that would require them to deliver 911 calls outside their service areas.[106] On the other hand, 911 authorities and Comtech argue that that providers should deliver 911 traffic to NG911 ESInet ingress points, either to legacy network gateways for TDM traffic or designated points of interconnection for IP traffic.[107]

30. Our proposed rule would confirm 911 authorities' role in designating points for delivery of 911 calls in the NG911 environment, whether such delivery points are at the ESInet boundary, at

[100] For discussion of what constitutes a valid request, see Section III.A.3 below.

[101] Forty-three states, the District of Columbia, Guam, and Puerto Rico reported expenditures on NG911 programs in calendar year 2021. Fourteenth Annual 911 Fee Report at 3. The total amount of reported NG911 expenditures in 2021 was $419,801,018.67. *Id.*

[102] Pennsylvania Emergency Mgmt. Agency Comments at 4 ("In some cases, the current environment promotes a contentious, uncoordinated transition to NG911 service rather than the cooperative, coordinated transition desired by [Pennsylvania Emergency Mgmt. Agency."); Minnesota Dept. of Public Safety Comments at 1 ("To date, not a single OSP who receives cost recovery today has submitted an interconnect plan to our ingress vendor identifying their intent to rehome their 9-1-1 ingress network. They have indicated that until they understand how the rehoming will affect their cost recovery, they are unwilling to do so."); Comtech Comments at 7.

[103] Comtech Comments at 4 (describing such disputes as "protracted"); Pennsylvania Emergency Mgmt. Agency Comments at 4 ("Some ILECs are embracing the transition to NG911 while others are looking to negotiate their role and cost responsibilities for NG911 service."); Arizona Dept. of Administration Reply at 1.

[104] Comtech Comments at 7.

[105] South Carolina Telephone Coalition Comments at 2; NTCA Comments at 6; Nebraska RLECs Reply at 3.

[106] South Carolina Telephone Coalition Comments at 3; Minnesota Telecom Alliance Comments at 3-4 (rec. Jan. 19, 2022) (Minnesota Telecom Alliance Comments).

[107] Comtech Comments at 7; Pennsylvania Emergency Mgmt. Agency Comments at 3; Texas 9-1-1 Entities Comments at 6-7.

individual PSAPs, or at other points in the network that allow emergency calls to be answered.[108] We believe this approach would provide states with a uniform framework to manage NG911 transition costs and minimize time-consuming negotiations with providers. We seek comment on this proposal. Would it help to resolve state-level controversies regarding the delivery of 911 traffic in an NG911 environment? Should we take into consideration the number, location, or type of points of interconnection provided by the state? For example, should we require delivery of 911 traffic to point(s) designated by the 911 authority only if the points of interconnection meet certain criteria, e.g., the points of interconnection are located within the state to which 911 service is being provided, there are a specific number of points of interconnection per LATA, or the points of interconnection are able to receive traffic in specific formats (such as TDM or IP)? What would the benefits and costs be to wireline, CMRS, interconnected VoIP, and Internet-based TRS providers and 911 authorities of setting the demarcation point as proposed?

31. Section 9.4 of the Commission's rules currently requires all telecommunications carriers to "transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 9.5."[109] Section 9.10(b) of the Commission's rules refers to this provision to set the point to which CMRS providers must transmit all wireless calls.[110] Similarly, section 9.11(b)(2)(ii) of the Commission's rules refers to section 9.4 to set the point to which fixed and non-fixed interconnected VoIP service providers must deliver all 911 calls, ANI, and location information.[111] For VRS and IP Relay providers, section 9.14(d)(2)(iii) also refers to section 9.4 to set the point for delivery of any communication initiated by an VRS or IP Relay user dialing 911.[112] For IP CTS providers, section 9.14(e)(2)(ii) refers to section 9.4 to set the point for delivery of any communication initiated by an IP CTS user dialing 911.[113] Other Internet-based TRS providers, per section 9.14(b)(2)(i), must determine an appropriate point for call delivery that corresponds to the caller's location and relay the call to that entity.[114] The subpart J we propose in this *Notice of Proposed Rulemaking* would implement a

[108] Most public safety commenters support setting a point for delivery of NG911 traffic at the ESInet. *See, e.g.*, BRETSA Comments at 7-8; Texas 9-1-1 Entities Comments at 8. We note that the rules we propose in this *Notice of Proposed Rulemaking* would not affect the 911 resiliency, redundancy, and reliability rules at part 9, subpart H of the Commission's rules. We also note that the proposed rules would not affect the extent of the Commission's jurisdiction over providers that supply services before and after the point(s) designated by 911 authorities, e.g., covered 911 service providers. *See, e.g.*, 47 CFR § 9.19(a)(4)(i).

[109] 47 CFR § 9.4.

[110] 47 CFR § 9.10(b) (requiring CMRS providers to "transmit all wireless 911 calls . . . to a designated statewide default answering point or appropriate local emergency authority pursuant to § 9.4").

[111] 47 CFR § 9.11(b)(2)(ii) (requiring interconnected VoIP service providers to transmit 911 calls, ANI, and certain location information to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4).

[112] 47 CFR § 9.14(d)(2)(iii) (requiring VRS and IP Relay providers to transmit all 911 calls (provided that "all 911 calls" is defined as "any communication initiated by an VRS or IP Relay user dialing 911"), ANI, the name of the VRS or IP Relay provider, and the communications assistant's (CA's) identification number, and certain location information to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4).

[113] 47 CFR § 9.14(e)(2)(ii) (requiring IP CTS providers to transmit all 911 calls (provided that "all 911 calls" is defined as "any communication initiated by an IP CTS user dialing 911"), the telephone number that is assigned to the caller and that enables direct callback with captions, and certain location information to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's dispatchable location and that has been designated for telecommunications carriers pursuant to § 9.4).

[114] 47 CFR § 9.14(b)(2)(i) (requiring certain Internet-based TRS providers to determine the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and to relay the call to that entity).

uniform framework for 911 call-routing in the NG911 environment by requiring wireline, CMRS, interconnected VoIP, and Internet-based TRS providers (including VRS, IP Relay, and IP CTS) to transmit all 911 calls to the point(s) designated by the 911 authority within specific timeframes from the effective date of the IP service delivery requirement or after a valid request for IP-based service by a state or local 911 authority, whichever is later. The effect of these proposed rules would be that upon a valid request for IP-based service, wireline, CMRS, interconnected VoIP, and Internet-based TRS providers would be required to deliver 911 traffic to the point(s) that allow emergency calls to be answered that are designated by the local or state entity that has the authority and responsibility to designate the point(s) to receive 911 calls. In the absence of a valid request for IP-based service by the relevant 911 authority, the existing provisions of section 9.4 and by reference 9.10(b), 9.11(b)(2)(ii), 9.14(d)(2)(iii), 9.14(e)(2)(ii), and 9.14(b)(2)(i) would continue to apply for providers covered by those provisions. We seek comment on this approach.

32. In their comments, the Texas 9-1-1 Entities suggest an approach that would distinguish between delivery of IP and legacy services.[115] Under their proposal, within six months of a "bona fide request" by a 911 authority or its designated NG911 service provider, non-IP providers (which the Texas 9-1-1 Entities define as a "non-IP capable un-upgraded originating service provider") would be required to "directly or indirectly connect, in accordance with industry standards," to the Legacy Network Gateway provided by the 911 authority or its NG911 service provider, while IP-capable providers would be required to fully support delivery of 911 traffic in NG911 format, i.e., "(i) directly or indirectly connect, in accordance with industry standards, via Session Initiation Protocol; (ii) deliver [Presence Information Data Format—Location Object (PIDF-LO)]; and (iii) use a Location Validation Function provided by the 9-1-1 authority (or its designated NG9-1-1 System Service Provider agent)."[116] We seek comment on this alternative approach. What are the benefits and costs associated with this proposal? Would it be beneficial to treat IP-based providers differently from providers that are not IP-based? What threshold legacy issues would we need to determine before adopting this proposal either in full or in part? Should we establish a minimum number of legacy network gateway points of interconnection within each state? Or should there be a minimum number of legacy network gateway points of interconnection per LATA? It appears that several states provide two legacy network gateway points of interconnection per LATA.[117] Would this be a reasonable approach? Alternatively, would it be preferable to require no minimum number of legacy network gateway points of interconnection before a "bona fide request" is made? Are there any other factors we should consider in connection with this proposal?

33. *Cost Allocation.* In addition to issues regarding the designation of 911 delivery points in the NG911 environment, disagreements over cost allocation appear to have contributed to delays in transitioning to NG911.[118] To address this concern, we propose to establish a default demarcation point for purposes of cost allocation in the NG911 environment. Under this proposed approach, states and localities would remain free to establish cost recovery mechanisms as they deem necessary for the costs of delivering 911 traffic to required destination point(s), but, in the absence of such mechanisms, the cost of compliance from call origination to the demarcation point would presumptively be the responsibility of

[115] Texas 9-1-1 Entities Comments at 7-9.

[116] *Id*. at 8.

[117] *See* Texas 9-1-1 Entities Reply at 6 & n.20 (rec. Feb. 3, 2022) (Texas 9-1-1 Entities Reply).

[118] The Minnesota Department of Public Safety notes that it has contracted with a vendor to "rehome" the statewide ingress points for 911 traffic in Minnesota but that, to date, the providers that receive cost recovery have not submitted interconnection plans to the vendor and will not do so until they understand how rehoming will affect their cost recovery. Minnesota Dept. of Public Safety Comments at 1. Comtech also cites examples of legacy 911 providers that it contends have refused to interconnect to designated NG911 points of interconnection to preserve the payments they receive for legacy 911 services. Comtech Comments at 4-5, 7. Comtech asserts that these delays can result in ongoing costs for 911 authorities because they must continue to maintain legacy 911 networks until all providers have migrated to the NG911 network. Comtech Reply at 5-6.

the wireline, CMRS, interconnected VoIP, or Internet-based TRS provider. As a default mechanism, this proposal would allocate costs only when the parties are unable to agree on cost recovery measures. It thus would not preempt state or local authority over 911, including existing 911 cost recovery mechanisms. There is strong support for this default approach among public safety commenters, and it is consistent with the request in NASNA's Petition.[119]

34. Our cost allocation proposal is also consistent with the Commission's approach to similar cost allocation issues in the *King County* proceeding two decades ago. In *King County*, the Commission responded to complaints from state and local 911 authorities that wireless service providers were delaying implementation of wireless E911 due to disagreements regarding the appropriate demarcation point for responsibility and cost.[120] The Wireless Telecommunications Bureau found, and the Commission later affirmed, that for a wireless carrier to satisfy its obligation to provide Phase I information to the PSAP, the carrier must bear the costs to deliver the information to the 911 selective router.[121] The Bureau found that it was reasonable "to make the carriers responsible for those expenditures necessary to deliver location information in a usable form to the E911 Network so as to ensure that their customers have access to enhanced 911 services."[122] However, the *King County* decisions also affirmed that 911 authorities and wireless providers could agree on a different point for cost allocation and call delivery. [123]

35. Today, as 911 authorities seek to retire legacy selective routers[124] and migrate to NG911 networks, legacy selective routers will no longer be the network element that "analyzes and distributes" information to the NG911 network, and therefore will not be relevant points for determining appropriate cost allocation where state or local 911 authorities have implemented ESInets and other IP-based network elements. These IP-based network elements perform similar functional roles to legacy selective routers, while also providing new capabilities that can support flexible re-routing of 911 calls in response to on-the-ground conditions.

36. As with the *King County* decisions, we note that the costs of installing, maintaining, and upgrading components necessary to continue to deliver 911 traffic to 911 networks are required costs for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to continue to provide 911 service, a significant reason why consumers subscribe to telecommunications services.[125] Several public safety entities specifically argue that the Commission should either extend the precedent set for wireless

[119] NASNA Petition at 2-3 (urging the Commission to "establish a NG911 cost demarcation point or points, for allocating costs when the parties cannot agree on the appropriate demarcation point(s)"). *E.g.*, Colorado Public Utilities Comm. Comments at 4; BRETSA Reply at 1-2; Letter from George Kelemen, Executive Director, iCERT, to Marlene Dortch, Secretary, FCC, PS Docket No. 21-479, at 3 (filed by Oct. 16, 2022) (iCERT *Ex Parte*) ("iCERT agrees with NASNA that any FCC review of OSP responsibilities should focus on the applicability of 47 C.F.R. §§ 9.4 and 9.5, as well as the allocation of costs and the appropriate demarcation points between OSPs and 911 Authorities.").

[120] *See King County Order on Reconsideration*, 17 FCC Rcd at 14789, para. 1.

[121] *King County Letter* at *3. On reconsideration, the Commission affirmed the Wireless Telecommunications Bureau's interpretation of the Commission's rules and extended that interpretation to require wireless carriers to bring Phase II data to "that point at which the system identifies the appropriate PSAP and distributes the voice call and location data to that PSAP," i.e. the selective router in legacy E911 environments. *King County Order on Reconsideration,* 17 FCC Rcd at 14789, para. 1; *see id.* at 14793, paras. 9-10.

[122] *King County Letter* at *4.

[123] *King County Order on Reconsideration*, 17 FCC Rcd at 14793, para. 10.

[124] Minnesota Dept. of Public Safety Comments at 1 ("[T]he [legacy selective routers] are end-of-service, end-of-life and starting to fail[.]"); Texas 9-1-1 Entities Reply at 4 ("[T]ransitioning may involve removing the single point of failure for a legacy selective router by [] having legacy OSPs connect to two Legacy Network Gateways ('LNGs') within the LATA.").

[125] *See King County Letter* at *5.

E911 service in the *King County* decisions to NG911 or apply a similar regulatory approach.[126] We tentatively agree that a regulatory approach similar to *King County* is appropriate here, with appropriate modification as needed to reflect the differences between legacy and NG911 networks. We seek comment on this analysis.

37. Our proposed approach would clarify that cost obligations for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers in the NG911 environment presumptively extend to the demarcation point(s) designated by state or local 911 authorities in the NG911 environment. We believe that by clarifying responsibility for costs to connect to NG911 networks, the proposed rules would resolve uncertainty regarding cost allocation between 911 authorities and wireline, CMRS, interconnected VoIP, and Internet-based TRS providers and thus would accelerate the transition to NG911.[127] We also believe that establishing a common cost allocation framework for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers would promote regulatory parity across service platforms. We seek comment on this approach. NASNA and public safety commenters contend that the cost of compliance with the requirement to deliver 911 traffic to the point of delivery should be the responsibility of the provider.[128] However, rural LECs and Minnesota entities argue that costs for delivery of 911 traffic should not extend outside of the provider's service area.[129] Pennsylvania and Arizona incumbent LECs argue that the state must cover the costs to deliver traffic from the edge of the incumbent LECs' networks to the ESInet, if the state does not build out connections to the provider's switches.[130] We also seek comment on these alternatives proposed by commenters to the *Public Notice*. Should we provide additional limits on these costs, such as only requiring wireline, CMRS, and interconnected VoIP providers to bear the cost of delivering traffic when interconnection points are available within the telecommunication carrier's LATA or service area? Are there other considerations for extending this approach to Internet-based TRS (IP CTS, VRS, and IP Relay)?

38. We seek estimates from rural providers and 911 authorities on specific costs for rural providers to comply with our proposed rules. What minimum costs would be required, from an implementation standpoint, for a given wireline, CMRS, interconnected VoIP, or Internet-based TRS provider to connect from current service areas to (1) legacy network gateways in the same LATA, or (2) an IP point of interconnection? How would this affect monthly or annual charges to subscribers, i.e., is there a range or specific dollar amount that would be newly reflected on customers' monthly bills?

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[126] *E.g.*, Arizona Dept. of Administration Reply at 1; Iowa Dept. of Homeland Security and Emergency Mgmt. Comments at 2; Nebraska Public Service Comm. Comments at 2; Texas 9-1-1 Entities Comments at 5; *see also* Comtech Reply at 3; iCERT *Ex Parte* at 3-4.

[127] *See, e.g.*, Pennsylvania Emergency Mgmt. Agency Comments at 4-5; Comtech Comments at 2.

[128] NASNA Petition at 2-3; Colorado Public Utilities Comm. Comments at 4 ("While the Commission's current regulation already *implies* this relationship through extrapolation, it would be better for the statute to declare explicitly that OSPs are responsible for the cost of 911 call delivery to the point of demarcation with the 911 system service provider."); BRETSA Reply at 2 ("As with any other call, originating service providers should be responsible for delivery of the call, and the cost of call delivery, to the called party (*i.e.*, the PSAP)."); iCERT *Ex Parte* at 3 ("As was the case with E911, OSPs should not charge the NG911 service provider for delivering NG911 calls to the appropriate point of demarcation.").

[129] South Carolina Telephone Coalition Comments at 2 (stating that NG911 service providers should be responsible for "covering the costs of transport of traffic from the edge of the ILEC service area to the NG911 interconnection point"); Minnesota Telecom Alliance Comments at 3 (stating that because NG911 routing changes are beyond existing meet points, they are "wholly within the financial responsibility and operational control of the state and local agencies"); Minnesota Dept. of Public Safety at 1 ("For the default, it seems most appropriate the edge of the OSP's network be defined as the cost demarcation point."); *see also* NTCA *Ex Parte* at 4 (requesting that the Commission seek comment on setting an originating provider's network edge as the default cost demarcation point).

[130] Arizona Dept. of Administration Reply at 1, Pennsylvania Emergency Mgmt. Agency Comments at 4.

39. We emphasize that under our proposed cost allocation approach, states and localities would retain the flexibility to develop alternative cost allocation mechanisms, including providing cost recovery for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to delivering 911 traffic to designated connection points. This approach conforms with the requests of NASNA commenters to preserve state and local authority over 911, especially with regard to 911 cost recovery mechanisms.[131] In the *King County Order on Reconsideration*, the Commission affirmed that 911 authorities and wireless providers could agree on a different point for cost allocation and call delivery.[132] Under our proposed rules, states would similarly be able to implement alternative points to which wireline, CMRS, interconnected VoIP, and Internet-based TRS providers should bear the cost to deliver 911 traffic in the NG911 environment. We seek comment on this aspect of our proposal. Specifically, we seek comment on whether and how the proposed cost allocation approach would impact negotiations between providers and 911 authorities on potential cost allocation mechanisms.[133] We invite commenters to identify steps that the Commission should take to promote cooperative efforts by 911 authorities and originating service providers that will lead to creative technological solutions for accelerating NG911 deployment, and ultimately improved 911 service for the public.

3. Valid Request for IP-based Service, Timing, and Registry

40. *Valid Request for IP-based Service.* Consistent with our existing rules for text-to-911[134] and our proposal in the *Location-Based Routing NPRM*,[135] we propose to define a valid request as one made by a local or state entity that certifies that it (1) is technically ready to receive 911 calls in the IP-based format requested, (2) is specifically authorized to accept calls in the IP-based format requested, and (3) has provided notification to the provider via either a registry made available by the Commission or by written notification reasonably acceptable to the provider. We believe that this approach would minimize miscommunication between providers and 911 authorities and facilitate the timely delivery of 911 calls once state and local 911 authorities indicate their readiness to receive calls in IP format at the destination point(s) they designate. We additionally agree with commenters who indicate that this approach would provide predictability and clarity to the 911 community.[136] We seek comment on this approach.

41. We also seek comment on what level of NG911 readiness PSAPs should achieve to trigger the requirements for 1) wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to transmit 911 calls to the point(s) designated by the 911 authority, and 2) wireline, interconnected VoIP, and Internet-based TRS providers to begin delivering calls, including routing and location information, in IP-based format. Our proposed approach would establish one level of readiness to trigger these obligations. We seek comment on whether specific NG911-related network components or capabilities would need to be in place to establish readiness. Another approach, as suggested by NASNA, would be to define three readiness phases based on the TFOPA "NG9-1-1 Readiness Scorecard."[137] What are the

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[131] NASNA Petition at 6; BRETSA Comments at 8 (stating that Commission oversight is helpful, but that it "must be subject to state determination of call-routing, allocation of responsibility for costs of service, and similar matters").

[132] *King County Order on Reconsideration*, 17 FCC Rcd at 14793, para. 10.

[133] *See* NTCA *Ex Parte* at 4 (requesting that the Commission seek comment on whether and how the proposed rules would impact negotiations).

[134] 47 CFR § 9.10(q)(10)(iii) (defining a valid request for text-to-911 service).

[135] *Location-Based Routing NPRM* at *16, paras. 51-52.

[136] NENA Comments at 4; Colorado Public Utilities Comm. Comments at 5.

[137] NASNA Petition at 7-8. NASNA suggests that in Phase I, the ESInet would be ready to receive 911 calls from OSPs via a Legacy Network Gateway. *Id.* at 7. In Phase II, the ESInet would be ready to receive 911 calls in SIP format. *Id.* at 8. In Phase III, the ESInet would be ready to receive 911 calls in NG911 format. *Id.* at 8. "The 911 authority/ESInet administrator may request all three phases simultaneously if the implementation of the ESInet allows for this." *Id*. at 8.

costs and benefits associated with NASNA's suggestion? If we were to adopt NASNA's suggestion, what level of readiness would trigger the requirement for service from wireline, CMRS, interconnected VoIP, and Internet-based TRS providers? Are there generally accepted standards for PSAP readiness to accept IP traffic? How have 911 authorities that accept some IP traffic navigated readiness with providers? Should we consider different or additional phases? Should individual PSAPs be able to trigger the requirement or should readiness be established at a more aggregated level, e.g., on an ESInet-by-ESInet or state-by-state basis? As part of a valid request, should a 911 authority be required to certify or demonstrate the capability of its IP-based network to support 911 interoperability? Have there been additional lessons learned from NG911 implementations since the release of the 2016 TFOPA Final Report?[138] Regarding NG911 implementation, we ask commenters to identify best practices that have been developed based on lessons learned.

42. For purposes of determining whether a state or local 911 authority could be technically ready to receive calls in IP-based format, we seek comment on the elements that a state or local 911 authority would need to have in place before making a valid request.[139] In the *Location-Based Routing NPRM* proceeding, Verizon argues for a "robust PSAP readiness standard, that reflects the substantial completion of a PSAP's NG911 provider's i3 based solution" as the basis for considering a request "valid" and triggering an implementation period.[140] Verizon asserts that relevant factors for PSAP readiness to accept IP interconnection would be, at a minimum: (1) "PSAP connectivity with a NG911 provider who has fully deployed a standards-based i3 IP infrastructure"; (2) "completion of SIP connectivity onboarding and testing with Wireless Originating Service Providers"; (3) "completion of HTTP-Enabled Location Delivery (HELD) certification"; and (4) "PSAP i3-ready call handling equipment."[141] We seek comment on whether some or all of these factors should be considered in determining readiness before a valid request may be made. What are the benefits and costs associated with such a proposal? Would adopting a specific set of factors to establish readiness limit the flexibility of state and local 911 authorities as they continue their NG911 deployments? What efficiencies would be gained from adopting a specific set of factors? Should we consider additional factors to determine the level of readiness needed before a valid request may be made?[142] For example, T-Mobile, in its comments on the *Location-Based Routing NPRM*, indicates that comprehensive testing would be required to determine PSAP readiness.[143] Should we require testing as a precondition to a valid request? Should

[138] *See* APCO *Ex Parte* at 2 (indicating that the TFOPA Final Report makes "assumptions about the implementation of NG911 that are no longer valid").

[139] As an example of possible readiness elements, we note that TFOPA created a "NG9-1-1 Readiness Scorecard" that categorizes components of NG911 implementation. TFOPA NG9-1-1 Readiness Scorecard at 17-21.

[140] Verizon LBR NPRM Comments at 8.

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

[142] Other commenters in the *Location-Based Routing NPRM* proceeding provided additional examples of factors we could consider to determine readiness. *E.g.*, CTIA Comments, PS Docket No. 18-64, at 9 (rec. Feb. 16, 2023) (CTIA LBR NPRM Comments) (noting that the TFOPA Readiness Scorecard identifies hardware, software, data, operational policies and procedures, security, and governance elements that are necessary for a PSAP to make the full-scale transition to NG911); Alliance for Telecommunications Industry Solutions Comments, PS Docket No. 18-64, at 5 (rec. Feb. 16, 2023) (ATIS LBR NPRM Comments) (The Commission "should not employ a 'registry' approach to trigger implementation deadlines; it is necessary for state and local governments to engage directly with individual wireless providers in order to become technically ready and capable to receive and process 911 calls in IP format in the first instance."); Intrado LBR NPRM Comments at 6 (noting that completion of IP-based delivery requires several steps and time, such as establishing new connectivity into the ESInet, cutting traffic over from the old TDM path to IP, nationwide scaling, and significant testing/validation, and recommending "further discussion with the CMRS providers and PSAPs regarding a standardized definition of PSAP readiness and a flexible implementation timeframe to account for CMRS/PSAP discussions and varying implementation steps/timelines").

[143] T-Mobile LBR NPRM Comments at 12.

we have a separate request process for triggering IP-based service from Internet-based TRS providers from the valid request process for wireline, CMRS, and interconnected VoIP providers? If so, are there additional or different readiness criteria that should be included for IP-based service from Internet-based TRS providers? Are there lessons learned from implementation of real-time text (RTT) as direct IP traffic from service providers that could be applied here?[144] Were there implementation issues that could have been prevented?[145]

43. In addition, we seek comment as to whether we should define "IP-capable" as part of the readiness determination. Would such a definition be useful to wireline, interconnected VoIP, and Internet-based TRS providers and state and local 911 authorities? If so, what level of specificity should be required in the definition? For example, in the *Location-Based Routing NPRM* proceeding, T-Mobile indicates that the Commission should delineate between SIP and NG911 connectivity.[146] What are the benefits associated with making this distinction in a potential definition of "IP-capable"? Should IP-capable mean SIP? Should IP-capable mean one or more specific implementations of SIP?[147] What are the impacts if the Commission does not specify a particular implementation of SIP in a definition of IP-capable?[148] We also seek comment on any existing technological solutions to address challenges with different SIP implementations. What are the costs of those solutions to facilitate interoperability? NENA argues for using a more specific term in the rules "such as 'i3 compatible' or some other mutually-agreed terminology to describe standards-based" NG911.[149] Would it be preferable to tie readiness to i3 compatibility? Are there other specific terms we should consider instead of or in addition to "IP-capable," such as "NG911-capable"?

44. We also seek comment on whether 911 authorities should be required to submit requests to all wireline, interconnected VoIP and Internet-based TRS providers in the serving area as a precondition to considering the request "valid"? In its comments to the *Location-Based Routing NPRM* proceeding, Verizon argues that unless a request is submitted to all wireless providers in the serving area, the rules would impose disparate burdens on competing service providers.[150] We seek comment as to whether that concern would also apply to wireline, interconnected VoIP, and Internet-based TRS providers. What are the benefits and disadvantages of such an approach? Are there any technical barriers associated with this approach? Would delaying a valid request to one provider in a service area until it can be sent to all providers in the service area slow the NG911 transition?

45. *Timing of IP-based Delivery and Delivery to Point(s) Designated by 911 Authorities.* For wireline and interconnected VoIP providers to deliver 911 calls in IP format, we propose an implementation timeline of six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority, whichever is later. For Internet-based TRS providers to deliver calls in IP format, we propose an implementation timeline of twelve months from the effective date of the IP service delivery requirement, or twelve months after a valid request for IP-based service by a state or local 911 authority, whichever is later. Our proposals also would allow 911 authorities and wireline, interconnected VoIP, or Internet-based TRS providers to enter into agreements setting an alternate time frame. In the event of 911 authorities and providers agreeing to

[144] *See* APCO *Ex Parte* at 3 (requesting that the Commission seek comment on whether there are any lessons learned from the implementation of Real-Time Text as direct IP traffic).

[145] *Id.*

[146] T-Mobile LBR NPRM Comments at 12.

[147] *See* APCO *Ex Parte* at 3 (requesting that the Commission seek comment on different implementations of SIP and impacts to interoperability).

[148] *Id.*

[149] NENA Comments, PS Docket No. 18-64, at 11 (rec. Feb. 15, 2023) (NENA LBR NPRM Comments).

[150] Verizon LBR NPRM Comments at 9.

an alternate time frame, we propose that the provider notify the Commission within 30 days of the parties' agreement. For wireline, CMRS, and interconnected VoIP providers to deliver 911 traffic to point(s) designated by 911 authorities, we similarly propose an implementation timeline of six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority, whichever is later. For Internet-based TRS, we propose a twelve-month implementation timeline to deliver 911 traffic to point(s) designated by 911 authorities from the effective date of the IP service delivery, or twelve months after a valid request for IP-based service from a state or local 911 authority, whichever is later.

46. We seek comment on the proposed six-month time frame for delivery of IP-based services for wireline, CMRS, and interconnected VoIP providers. Would six months be an adequate amount of time for wireline and interconnected VoIP providers to deliver 911 calls in IP-based format, and for wireline, CMRS, and interconnected VoIP providers to deliver 911 traffic to point(s) designated by 911 authorities? The record indicates support for a mandatory time frame by which providers would be required to deliver NG911 services once the PSAP is NG911-capable,[151] and that six months would be a reasonable time period.[152] NASNA notes that while it did not propose a specific time in its Petition, "six months is an ample time frame for OSPs to make necessary preparations for transition."[153] However, in response to our proposed six-month time frame for CMRS providers in the *Location-Based Routing NPRM*, some industry commenters contend that six months is not uniformly feasible, and propose time frames longer than six months or flexible time frames.[154] Would the same concerns apply to wireline and interconnected VoIP providers? Is a longer time frame, e.g., 18-24 months, needed to provide sufficient time for most wireline and interconnected VoIP providers to deliver traffic via IP to most NG911 networks? Should we adopt a tolling mechanism for wireline and interconnected VoIP providers similar to that proposed by T-Mobile in response to the *Location-Based Routing NPRM*?[155] We also seek comment on the proposed twelve-month time frame for delivery of IP-based services for Internet-based TRS providers. We propose a longer timeframe for Internet-based TRS consistent with previous Commission action regarding these services.[156] Because of operational differences between Internet-

[151] *See, e.g.*, Arizona Dept. of Administration Reply at 1; Pennsylvania Emergency Mgmt. Agency Comments at 2-3; Texas 9-1-1 Alliance, the Texas Commission on State Emergency Communications, and the Municipal Emergency Communication Districts Association Comments at 7-9 (rec. Jan. 19, 2022) (Texas 9-1-1 Entities Comments); Mission Critical Partners, LLC Comments at 5 (rec. Jan. 19, 2022) (MCP Comments); Comtech Comments at 4-6.

[152] NASNA Reply at 3 (rec. Feb. 3, 2022) (NASNA Reply); *see also* Comtech Comments at 5; Texas 9-1-1 Entities Comments at 9 (supporting a six-month time period for compliance with a valid request).

[153] NASNA Reply at 3.

[154] Verizon Comments, PS Docket No. 18-64, at 6 (rec. Feb 16, 2023) (Verizon LBR NPRM Comments) (stating that six months for CMRS providers may be feasible in some circumstances, "but only if the PSAP has fully implemented i3 in its network through a NG911 provider that has deployed its service in coordination with Verizon"); AT&T Services Inc. (AT&T) Comments, PS Docket No. 18-64, at 7 (rec. Feb. 16, 2023) (AT&T LBR NPRM Comments) (proposing 18-24 months for CMRS providers to deliver IP-based traffic to NG911 networks); *see also* The Industry Council for Emergency Response Technologies (iCERT) Comments, PS Docket No. 18-64, at 4 (rec. Feb. 14, 2023) (iCERT LBR NPRM Comments) (noting that the adequacy of six months for CMRS providers is dependent on how NG911 capability is determined and the process used by the Commission for facilitating PSAP requests); Intrado Life & Safety, Inc. (Intrado) Comments, PS Docket No. 18-64, at 6 (rec. Feb. 16, 2023) (Intrado LBR NPRM Comments) (recommending further discussion on PSAP readiness and flexible implementation time frames).

[155] T-Mobile USA, Inc. (T-Mobile) Comments, PS Docket No. 18-64, at 13 (rec. Feb. 16, 2023) (T-Mobile LBR NPRM Comments) ("Tolling mechanisms will be critical to allow carriers and PSAPs to collaboratively guarantee PSAP readiness, and timeframes must acknowledge the varying burdens on PSAPs and their vendors at each step of readiness.").

[156] *See Kari's Law/RAY BAUM'S Act Order*, 34 FCC Rcd at 6688, para. 210.

based TRS and other providers,[157] we believe that an additional six months is an appropriate amount of time for Internet-based TRS providers to make necessary network changes once other providers have come into compliance with the proposed rules.

47. Under our proposal, wireline, interconnected VoIP, and Internet-based TRS providers would be able to enter into agreements with local and state entities to establish an alternate time frame (other than six months for wireline and interconnected VoIP providers or other than twelve months for Internet-based TRS providers) for delivery of IP-based traffic. NASNA recommends that "as with E911 Phase I and II and text-to-911, mutually agreed upon extensions can be granted by the 911 authority to the OSPs when warranted by circumstances."[158] Would this approach be sufficient to address circumstances where more time is needed? Should we similarly enable local and state entities to enter into agreements with wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to establish an alternate time frame for delivering 911 calls to the point(s) in the IP-based network designated by the 911 authority? We seek comment on the length of time required by wireline, interconnected VoIP, and Internet-based TRS providers to complete IP connectivity onboarding and testing with 911 authorities that have requested IP-based service.

48. *NG911 Readiness Registry.* To facilitate notification, we seek comment on whether the Commission should require or make available a registry or database that would allow state and local 911 authorities to notify wireline, interconnected VoIP, or Internet-based TRS providers of readiness to receive calls in IP-based format, including associated location information. In the *Location-Based Routing NPRM*, we proposed making available a registry or database for CMRS providers and covered text providers.[159] If this proposal were adopted, we believe that establishing a common registry to notify all providers (wireline, CMRS, interconnected VoIP, and Internet-based TRS) would be beneficial to public safety entities and providers alike. It would provide state and local 911 authorities with one notification platform rather than requiring 911 authorities to use multiple to determine which providers would receive notice via multiple registries. We seek comment on this proposal. We also seek comment on the granularity of such a registry, including whether to organize it by PSAP, state, ESInet, or other level of specificity. Should it be combined with our existing Master PSAP Registry and Text-to-911 Registry?[160] If so, what features would be required in such a combined registry?

49. We note that in the *Location-Based Routing NPRM* proceeding, commenters expressed differing views on whether a PSAP registry would be useful for triggering delivery of IP-based service.[161] We believe that the need for providers to communicate with state and local 911 authorities does not necessarily obviate the need for a registry. Nevertheless, we seek comment on whether a registry might hamper NG911 transition efforts. Are there any ways in which a registry might prevent providers and state and local 911 authorities from coordinating requests for IP-delivery service?

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[157] *See id.* at 6687-89, paras. 208, 212; 47 CFR § 64.601(a)(23), (24), (51).

[158] *Id*.

[159] *Location-Based Routing NPRM* at *17, para. 52.

[160] *See* 47 CFR § 9.10(q)(10)(ii), (iii) (requirements for text-to-911 registry).

[161] For example, ATIS argues that the we should not employ a registry approach, as state and local governments need to engage directly with wireless providers to become technically ready and capable to receive IP format calls in the first instance. ATIS LBR NPRM Comments at 5. Verizon asserts that for wireless providers and PSAPs, the delivery of 911 calls in IP format will be less like the implementation of text-to-911 and "more analogous to—and in most respects more complex than—the early years of wireless E911 implementation." Verizon LBR NPRM Comments at 7-8. Accordingly, Verizon states, the registry mechanism is "inappropriate" in this context and will create confusion among PSAPs. *Id.* at 7. On the other hand, NENA proposes establishment of an "authoritative database" where a jurisdiction could certify that it is ready to receive IP calls and provide ESInet boundary information. NENA LBR NPRM Comments at 8.

50. *Appropriate Requesting Entities.* Under our proposed rule, the local or state entity with authority and responsibility to designate the point(s) that allow emergency calls to be answered would be the appropriate authority to request IP-based service from wireline, interconnected VoIP, and Internet-based TRS providers. However, statewide, regional, or county governmental entities transitioning to NG911 may deploy shared resources such as a common ESInet or other network elements, which may provide services for multiple PSAPs or public safety entities.[162] There are also still many PSAPs serving a single jurisdiction managed by a city, county, or police or fire department.[163] We seek comment on the appropriate requesting entity or entities we should include in our rule given the varied governance of NG911 deployments. Should the proposed rule include PSAPs, appropriate local emergency authorities, state or local 911 authorities, and/or other specified authorities as entities that may initiate a valid request for IP-based service?

4. Definitions

51. *Next Generation 911 (NG911).* We seek comment on defining the term "Next Generation 911." There are multiple definitions of "NG911" in both pending federal legislation and federal law. Most recently, the Spectrum Auction Reauthorization Act of 2023 (H.R. 3565) introduced in May 2023 includes a definition of "Next Generation 9-1-1":

> [A]n Internet Protocol-based system that— (A) ensures interoperability; (B) is secure; (C) employs commonly accepted standards; (D) enables emergency communications centers to receive, process, and analyze all types of 9-1-1 requests for emergency assistance; (E) acquires and integrates additional information useful to handling 9-1-1 requests for emergency assistance; and (F) supports sharing information related to 9-1-1 requests for emergency assistance among emergency communications centers and emergency response providers.[164]

In the Next Generation 9-1-1 Advancement Act of 2012, Congress enacted a definition of "Next Generation 9-1-1 services" for purposes of administration of federal 911 implementation grants.[165] We note that in response to the *Location-Based Routing NPRM*, commenters discussed whether the Commission should adopt a definition of NG911. For example, APCO urges the Commission to adopt the definition of NG911 "as defined by the public safety community with support from a variety of stakeholders" that appeared in legislation passed by the House of Representatives in 2022 but was not enacted into law.[166] However, NENA urges the Commission to "be cautious in adopting formal

[162] TFOPA Final Report at 100.

[163] *Id.* at 76.

[164] Spectrum Auction Reauthorization Act of 2023, H.R. 3565, 118th Cong. § 159 (2023); Press Release, U.S. House of Representatives Energy and Commerce Committee, Chair Rodgers Announces Full Committee Markup of 19 Bills (May 22, 2023), https://energycommerce.house.gov/posts/chair-rodgers-announces-full-committee-markup-of-19-bills (linking to text of H.R. 3565).

[165] The statute provides that "Next Generation 9-1-1 services" means "an IP-based system comprised of hardware, software, data, and operational policies and procedures that—(A) provides standardized interfaces from emergency call and message services to support emergency communications; (B) processes all types of emergency calls, including voice, data, and multimedia information; (C) acquires and integrates additional emergency call data useful to call routing and handling; (D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities; (E) supports data or video communications needs for coordinated incident response and management; and (F) provides broadband service to public safety answering points or other first responder entities." 47 U.S.C. § 942(e)(5).

[166] APCO Comments, PS Docket No. 18-64, at 5 (rec. Feb. 16, 2023). APCO urges the Commission to define NG911 as "an IP-based system that: (A) ensures interoperability; (B) is secure; (C) employs commonly accepted standards; (D) enables emergency communications centers to receive, process, and analyze all types of 9–1–1 requests for emergency assistance; (E) acquires and integrates additional information useful to handling 9–1–1 requests for emergency assistance; and (F) supports sharing information related to 9–1–1 requests for emergency assistance among emergency communications centers and emergency response providers." *Id.* (citing Spectrum

(continued….)

definitions [of terms such as NG911]… without full industry-wide support and without considering all potential consequences of such definitions."[167] NENA also asks the Commission to consider using the term "i3 compatible" or some other mutually-agreed upon terminology rather than "IP-enabled" to describe standards-based NG911.[168] We seek comment on whether we should adopt one of these definitions or incorporate elements of these or other definitions of NG911 into our rules. Is a definition of NG911 necessary for compliance with the Commission's proposed NG911 rules? If so, we seek input on crafting a definition that would be technologically neutral. We note that recent legislative definitions include qualitative descriptors of NG911 systems, such as security, interoperability, and use of commonly accepted standards, as well as specific technical capabilities. Should we include any or all of these elements in a definition of NG911 adopted by the Commission? Do the definitions discussed above encompass current NG911 networks and technologies, as well as possible future NG911 technologies?

52. *Emergency Services Internet Protocol Network (ESInet).* We propose to adopt a definition of "Emergency Services Internet Protocol Network (ESInet)" that defines the term in reference to the protocol used on the network, the entities that manage the network, and the use of the network for purposes of emergency services communications. We therefore propose to define "Emergency Services Internet Protocol Network (ESInet)" as "[a]n Internet Protocol (IP)-based network used for emergency services communications, including Next Generation 911." We seek comment on this proposed definition.

53. *911 Authority.* We propose to adopt a definition of "911 Authority" that would define the term for purposes of our rules relating to the NG911 transition. We propose to define "911 Authority" as "[t]he state, territorial, regional, Tribal, or local agency or entity with the authority and responsibility under applicable law to designate the point(s) to receive emergency calls." Does this definition encompass the diverse set of authorities in the United States that have the authority and responsibility to designate the point(s) to receive emergency calls? We seek comment on this proposed definition.

54. In addition to the proposed definitions of "Next Generation 911 (NG911)," "Emergency Services Internet Protocol Network (ESInet)," and "911 Authority," are there any other terms that we should define for purposes of the cost allocation and IP-delivery rules that we propose for wireline, CMRS, and interconnected VoIP providers? For example, should we include definitions of potential entry points for call delivery in an NG911 environment, such as Legacy Network Gateway or IP Point of Interconnection?

5. Applicability of Interconnection Statutes to 911

55. Although the NASNA Petition did not explicitly raise this issue, the record indicates that disagreement over the applicability of interconnection requirements to 911 has contributed to disputes regarding NG911 deployments in several states.[169] Some rural LECs argue that the interconnection provisions in sections 251 and 252 of the Act require 911 authorities and their contracted NG911 service providers to provide points of interconnection for receipt of 911 traffic within LEC local service areas.[170]

(Continued from previous page)
Innovation Act of 2022, H.R. 7624, 117th Cong. § 301 (2022)). The language proposed by APCO is identical to that included in the Next Generation 9-1-1 Act of 2023.

[167] NENA Reply at 7-8, PS Docket No. 18-64 (rec. Mar. 20, 2023) (NENA LBR NPRM Reply) (noting that such definitions may have "substantial impacts" on state statutes, federal and state regulatory bodies, future grant programs, and future case law).

[168] NENA LBR NPRM Comments at 11.

[169] *See, e.g.*, South Carolina Telephone Coalition Comments at 2.

[170] Nebraska RLECs Comments at 4-5; NTCA Comments at 4-5; Letter from Guy N. Benson, Policy Director, JSI and Margaret M. Fox, Attorney for the South Carolina Telephone Coalition, Burr & Forman LLP, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21-479, at 2 (filed Oct. 31, 2022) (South Carolina Telephone Coalition *Ex Parte*).

Some of these commenters also argue that requiring carriers to build out to distant points for purposes of 911 interconnection could impose high costs on small rural customer bases that this would undermine the universal service mandates of section 254 of the Act.[171] NTCA also argues that requiring carriers to interconnect outside of their networks would be contrary to the Commission's historical approach to interconnection under the Act, under which rural telephone companies are not required to agree to interconnect outside of their network unless a state commission determines that doing so meets requirements in section 251(f)(1)(A) of the Act.[172] Conversely, some public safety entities argue that sections 251 and 252 in fact require LECs to connect to a 911 authority's ESInet.[173]

56. We propose to clarify that the interconnection requirements of sections 251 and 252 do not require 911 authorities or their contracted NG911 service providers to provide points of interconnection for 911 traffic within existing LEC service areas. Sections 251 and 252 were intended to impose interconnection and negotiation duties on commercial telecommunications carriers (including both incumbent and competitive LECs) to promote a competitive telecommunications marketplace.[174] State and local 911 authorities are not commercial "telecommunications carriers" to which the interconnection requirements of sections 251 and 252 would apply, because they do not offer telecommunications for a fee directly to the public.[175] In the context of wireless cost allocation for E911 service, the U.S. Court of Appeals for the District of Columbia Circuit stated that PSAPs are not "private businesses… providing for-profit services to the public… PSAPs are governmental entities playing a critical role in the provision of public safety services."[176] Similarly, we propose to clarify that section 251(f)(1)(A) of the Act, which provides that a rural ILEC is not required to interconnect under section 251(c) until certain conditions are met, does not apply because 911 authorities are not telecommunications carriers requesting interconnection. We seek comment on this analysis.

B. Monitoring and Compliance

57. We seek comment on whether the Commission should implement any new data collections to assist in monitoring compliance with our proposed rules for NG911. If reporting would be helpful, what specific information should providers include and how frequently should we require them to

[171] *E.g.*, NTCA Comments at 4.

[172] *Id*.

[173] *E.g.*, Texas 9-1-1 Entities Comments at 6-7.

[174] The Telecommunications Act of 1996 was intended to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat 56, 56 (1996 Act). The Senate conference report on the 1996 Act stated that Section 251(a) "imposes a duty on local exchange carriers possessing market power in the provision of telephone exchange service or exchange access service in a particular local area to negotiate in good faith and to provide interconnection with other telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service." S. Rep. No. 104-230, at 117 (1996) (Conf. Rep.) (1996 Act Conf. Rep.). The same report indicates that Section 252 imposes "separate subsidiary and other safeguards on certain activities of the [Bell Operating Companies]." 1996 Act Conf. Rep. at 150.

[175] A "telecommunications carrier" is a provider of a "telecommunications service," which is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(51), (53).

[176] *U.S. Cellular Corp.*, 254 F.3d at 84. The court held, in part, that the Commission's action to remove a rule that conditioned wireless carriers' obligation to deliver E911 services on guaranteed state or local government funding did not violate the cost causation principle, assuming that this principle applies outside of rate regulation. (Under the cost causation principle, when the Commission sets rates, it must specifically justify any rate differential that does not reflect cost.) In addition, the court held that governmental entities responsible for coordinating emergency response were not cost-causers within this principle.

report? For example, should the Commission require originating service providers to submit implementation plans for delivering 911 voice traffic in IP format, including converting TDM to IP, and periodic progress reports for implementing such plans? We also seek comment on measures the Commission could take to limit the burden of reporting on the provision of IP-based service. To what extent could the Commission limit the burden of any reporting requirements by providing increased flexibility for providers or businesses identified as small by the Small Business Administration?[177] As an alternative to reporting, should the Commission require wireline, interconnected VoIP, and Internet-based TRS providers to certify that they are in compliance with requirements for delivery of calls in IP format? Should the proposed rules include requirements for disclosures to PSAPs or other state or local 911 authorities in connection with the proposed NG911 rules?

58. Public safety entities and members of the public seeking to report non-compliance with the proposed rules would be able to file complaints via the Public Safety and Homeland Security Bureau's Public Safety Support Center or through the Commission's Consumer Complaint Center.[178] We tentatively conclude that these existing mechanisms should be sufficient for addressing potential violations of the NG911 rules. We seek comment on this tentative conclusion.

C. Additional Proposals

59. Several commenters responding to the NASNA Petition urge us to expand the scope of the rulemaking beyond the specific issues raised in the petition. For example, BRETSA urges us to address how NG911 can assist non-English speakers and the deaf and hard of hearing, standards and cost allocation for transferring 911 calls between PSAPs in different states, and the delivery of text-to-911.[179] NTCA and Nebraska RLECs advocate looking more broadly at IP interconnection and the proper allocation of transport costs.[180] The Alarm Industry Communications Committee urges the Commission to restrict the use of "device-initiated emergency service calls to protect the integrity of the NG911 network."[181] We decline to address these additional issues in this *Notice*.

D. Legal Authority

60. The Communications Act of 1934, as amended (the Act) established the FCC, in part, "for the purpose of promoting safety of life and property through the use of wire and radio communication."[182] Beyond that general mandate, Congress has repeatedly and specifically endorsed a role for the Commission in the nationwide implementation of advanced 911 capabilities. Section 251(e)(3) of the Act, which directs the FCC to "designate 911 as the universal emergency telephone number,"[183] and other federal 911-related statutes demonstrate that the Commission's general

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[177] For example, the Commission's requirements for live call data reporting provide a reduced reporting schedule for non-nationwide CMRS providers. 47 CFR § 9.10(i)(3)(ii)(D).

[178] The Public Safety Support Center is a web-based portal that enables PSAPs and other public safety entities to request support or information from the Public Safety and Homeland Security Bureau and to notify it of problems or issues impacting the provision of emergency services. *Public Safety and Homeland Security Bureau Announces Opening of Public Safety Support Center*, Public Notice, 30 FCC Rcd 10639 (PSHSB 2015); FCC, *Public Safety Support Center*, https://www.fcc.gov/general/public-safety-support-center (last visited May 16, 2023). The Consumer Complaint Center handles consumer inquiries and complaints, including consumer complaints about access to 911 emergency services. *See* FCC, Consumer Complaint Center, https://consumercomplaints.fcc.gov/hc/en-us (last visited May 16, 2023).

[179] BRETSA Comments at 2-5.

[180] NTCA Comments at 2-5; Nebraska RLECs Reply at 2-3.

[181] Letter from John A. Prendergast, Attorney for Alarm Industry Communications Committee, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21-479, 11-153, and 10-255, at 4 (filed Aug. 22, 2022).

[182] 47 U.S.C. § 151.

[183] 47 U.S.C. § 251(e)(3).

jurisdictional grant includes the responsibility to set up and maintain a comprehensive and effective 911 system, encompassing a variety of communication services in addition to wireless and IP-enabled voice services.[184] The NET 911 Act indicated the congressional goal to "promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E-911 services, encourage the Nation's transition to a national IP-enabled emergency network, and improve the 911 and E-911 access to those with disabilities."[185] The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) advanced the Commission's implementation of technologies such as text-to-911 by granting authority to promulgate "regulations, technical standards, protocols, and procedures . . . necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible."[186] RAY BAUM'S Act directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls "regardless of the technological platform used" and defined the term "9-1-1 call" to include a voice call "or a message that is sent by other means of communication."[187]

61. Together, these statutes indicate that Congress has given the Commission broad authority to ensure that the 911 system, including 911, E911, and NG911 calls and texts from all providers, is available and functions effectively.[188] The Commission has previously concluded that "[i]n light of these express statutory responsibilities, regulation of additional capabilities related to reliable 911 service, both today and in an NG911 environment, would be well within Commission's . . . statutory authority."[189] The Commission also has stated that "[t]he Commission already has sufficient authority to regulate the 911 and NG911 activity of, inter alia, wireline and wireless carriers, interconnected VoIP providers, and other IP-based service providers,"[190] and also that its jurisdiction to regulate 911 extends to the regulation of NG911 across different technologies.[191] We seek comment on this analysis.

62. Commenters responding to the *Public Notice* support the view that the Commission has authority over NG911 as an extension of its jurisdiction over 911 generally.[192] No commenter argues that

[184] *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291, 09-14, Report and Order, 36 FCC Rcd 10804, 10811-12, para. 16 (2021) (*911 Fee Diversion R&O*) (noting that, taken together, federal 911-related statutes and Communications Act provisions "establish an overarching federal interest in ensuring the effectiveness of the 911 system").

[185] NET 911 Act, Preamble.

[186] Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat 2751 § 106(g) (2010) (CVAA) (codified at 47 U.S.C. § 615c(g)).

[187] Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348, Division P, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act) § 506(a), (c)(1) (codified at 47 U.S.C. § 615 Notes).

[188] *911 Fee Diversion R&O*, 36 FCC Rcd at 10811-10812, para. 16.

[189] *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13-75, 11-60, Report and Order, 28 FCC Rcd 17476, 17529-30, para. 150 (2013).

[190] 2013 NG911 Framework Report, Section 4.1.2.2 at 28.

[191] *Id.* (noting that the Commission "already has sufficient authority to regulate the 911 and NG911 activity of, *inter alia*, wireline and wireless carriers, interconnected VoIP providers, and other IP-based service providers"); *911 Governance and Accountability, Improving 911 Reliability*, PS Docket Nos. 14-193, 13-75, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208, 14209-10, 14223, paras. 3, 34 (2014) (*NG911 Policy Statement*) (stating that while the Commission had "previously undertaken to monitor the transition to Next Generation 911 (NG911) technologies to determine whether our rules should be revised or expanded to cover new best practices or additional entities, recent events have demonstrated that the pace of change already requires prompt action to review these vulnerabilities" (footnotes omitted) and that "the Commission has the public safety imperative to oversee each of the increasingly complex component pieces of the nation's 911 infrastructure").

[192] CTIA Comments at 4; iCert *Ex Parte* Letter at 2; Comtech Comments at 3; Comtech Reply at 5.

the Commission does not have authority to regulate NG911 as a general matter. We agree with commenters who indicate that power to regulate 911 is shared between the Commission and the states,[193] and our proposals in this *Notice of Proposed Rulemaking* are premised on that assumption. These proposals are not intended to alter state jurisdiction over 911 or to limit state and local authorities' ability to take action in their jurisdictions to advance NG911. The nationwide framework we propose expressly empowers state and local authorities and affords them flexibility to make decisions regarding the configuration, timing, and cost responsibility for NG911 implementation in their jurisdictions. Consistent with past practice, we intend to carry out our proposals in partnership with state and local authorities and in light of their unique interest in the delivery of 911 service to their communities. We seek comment on additional considerations for striking the most effective balance between state and federal authority to implement the transition to NG911.

E. Promoting Digital Equity and Inclusion

63. The Commission, as part of its continuing effort to advance digital equity for all,[194] 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[195] and benefits, if any, that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

F. Summary of Benefits and Costs

64. *Summary of Benefits of Proposed Actions.* As discussed above, the actions we propose in this *Notice of Proposed Rulemaking* have several potential benefits. First, removing an impediment to the transition to NG911 will speed up the arrival of NG911's public safety benefits to those who have yet to receive them. Second, allowing 911 authorities to retire aging legacy 911 systems will save 911 authority funds. Third, retiring legacy 911 systems will improve public safety by moving 911 calls to the more reliable NG911 system. Fourth, the proposed actions will reduce the need for negotiations between providers and 911 authorities, resulting in savings to both parties. We seek detailed comment on the scope and size of all of these benefits, as well as any additional benefits that our proposed actions may convey.

65. *Speeding up the NG911 Transition.* The proposed action will facilitate the rapid and effective transition to NG911 by requiring delivery of 911 calls from wireline, interconnected VoIP, and Internet-based TRS providers in IP-based format and establishing a point for the delivery of NG911 traffic. We seek comment on whether and how our proposed rules would benefit state and local 911 authorities by reducing NG911 transition costs and improve public safety by increasing the availability of NG911 services. While difficult to quantify numerically, the benefits of NG911 to the public appear to be extensive and to affect multiple aspects of 911 systems and response.[196] Commenters note that these

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[193] Colorado Public Utilities Comm. Comments at 2-3; NTCA Reply at 5.

[194] 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.

[195] 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).

[196] *See, e.g., NG911 NOI*, 25 FCC Rcd at 17880-81, paras. 28-29.

benefits include real-time call routing flexibility, faster call delivery, additional data for improved situational awareness, improved service reliability, improved call transfer capabilities, and better service to disabled and non-English speaking communities.[197] Including Internet-based TRS providers in this transition will also benefit individuals with hearing and speech disabilities who rely on TRS. We seek comment on the magnitude of these and other benefits that would accrue as a result of our proposed actions.

66. *Saving 911 Authority Funds.* The proposed action will end the need to maintain legacy 911 systems by requiring wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to connect to the point(s) designated by the 911 authority, requiring those providers to cover the costs of transmitting 911 calls to those points and requiring wireline, interconnected VoIP, and Internet-based TRS providers to deliver 911 traffic in IP-based format. Although ESInets are available in a large majority of jurisdictions, some providers resist connecting to them at the requested delivery points or transitioning from providing 911 calls in legacy format to providing 911 calls in IP-based format compatible with NG911. Our proposed action will allow 911 authorities to discontinue support of legacy networks—including the maintenance of legacy network gateways and selective routers. Legacy 911 systems include Centralized Automated Message Accounting (CAMA) trunks, legacy selective routers, and Automatic Location Information (ALI) databases.[198] We seek comment and specific information on the costs to 911 authorities to maintain legacy 911 networks while also operating an NG911 network. In addition, the requirement for wireline, interconnected VoIP, and Internet-based TRS providers to deliver IP-based 911 traffic would eliminate costs for 911 authorities to maintain transitional gateways to process and convert legacy calls. For states that deliver calls to PSAPs in IP-based format, our proposal would require any calls arriving in legacy TDM format to be converted into an IP-based protocol, such as SIP.[199] Several states report maintaining several legacy network gateways to convert legacy-format 911 calls at the ratio of two legacy network gateways per LATA.[200] This introduces an extra step that is inconsistent with the end-state NG911 system described in NENA's i3 standard.[201] Under the proposed rules, states would no longer need to maintain these gateways once all providers begin delivering IP-based traffic to the ESInet. We seek comment on these and other 911 authority costs that would be avoided if we adopt our proposed rules.

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[197] Comtech Reply at 4 (indicating that benefits of NG911 systems include "real-time call routing flexibility, faster call delivery, additional data for improved situational awareness, capabilities such as integrated text messages (and other multi-media messages soon), and significantly improved service reliability"); BRETSA Reply at 4-7 (detailing benefits including "[c]onferencing in telephone or video relay and language interpretation services during 9-1-1 call setup," "interstate 9-1-1 call transfer and CAD incident data transfer," "geospatial routing," and "transfer of CAD data with call transfer"); NTCA Comments at 2 (indicating that NG911 will provide increased situational awareness to first responders, which will benefit rural consumers).

[198] Comtech Reply at 5-6.

[199] Colorado Public Utilities Comm. Comments at 3 (discussing that because Colorado's ESInet must convert calls from TDM to SIP format, "the state's ESInet is that much further from representing a true NG911 system as described in the NENA i3 standard.").

[200] Texas 9-1-1 Entities Reply at 4 (stating that transitioning to NG911 "may involve removing the single point of failure for a legacy selective router by the having legacy OSPs connect to two Legacy Network Gateways ('LNGs') within the LATA."); Minnesota Dept. of Public Safety Comments at 1 (indicating that the state offers "two diverse TDM [points of interconnection] within each of Minnesota's five LATA boundaries."); Pennsylvania Emergency Mgmt. Agency Comments at 3 (detailing the state's NG911 efforts, which "includes establishing two time-division multiplexing OSP points of interconnection (POI) in each local access and transport area, as well as two SIP POIs for the state, to ingress calls into the NG911 system."); Comtech Comments at 7 (stating that South Carolina's network design includes two points of interconnection per LATA).

[201] Colorado Public Utilities Comm. Comments at 3.

67. *Improving Reliability.* The proposed actions will move 911 calls off of the aging legacy 911 system that commenters indicate is increasingly unreliable,[202] thus improving public safety. This will also accelerate consumer access to NG911 services.[203] NASNA argues that legacy 911 call routing and legacy network infrastructure is "beyond end-of-life and has an increasing failure rate."[204] For instance, in California, the 911 authority has been tracking the reliability and availability of the legacy 911 system for over 10 years and has seen an increase in outage minutes for the legacy 911 system.[205] In 2017 the average number of minutes of outage was 17,000 minutes per month, but in 2022 the average increased to over 59,000 outage minutes per month.[206] Moving from legacy systems to IP-based systems will reduce system outages and strengthen our 911 networks to improve public safety. We seek comment on the likely magnitude of the public safety benefits resulting from improved reliability and resiliency of the networks transitioning from legacy systems to NG911 systems.

68. *Reducing the Need for Negotiations.* Requirements for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to deliver 911 traffic to points designated by a 911 authority would minimize uncertainty, delays, and costs for 911 authorities to repeatedly negotiate for call delivery and cost responsibility with wireline, CMRS, interconnected VoIP, and Internet-based TRS providers. State and local 911 authorities and their contracted 911 service providers currently must work with each provider in their locality to negotiate costs and delivery to new designated delivery points.[207] Public safety entities report that there is ambiguity about providers' obligations to deliver 911 traffic to new NG911 networks and that this can lengthen negotiation time.[208] The proposed rules and database would permit states to notify wireline, CMRS, interconnected VoIP, and Internet-based TRS providers via a centralized database of readiness to accept IP-based 911 traffic, eliminating the need for individualized and extensive negotiations with providers. This would eliminate transactional costs for both 911 authorities and wireline, CMRS, interconnected VoIP, and Internet-based TRS providers and minimize the uncertainty and attendant delays currently associated with allocating costs for connecting to NG911 networks. We seek comment on the length of time that 911 authorities currently spend to negotiate connections, as well as the costs associated with doing so. Reducing the need to negotiate may also accelerate the NG911 transition. Comtech states that delays resulting from disputes between 911 authorities and providers inhibit consumers' access to NG911 services.[209] We seek comment on these and

[202] Minnesota Dept. of Public Safety Comments at 1 (stating that "the LSRs [legacy selective routers] are end-of-service, end-of-life and starting to fail"); Texas 9-1-1 Entities Reply at 4; NASNA Comments, PS Docket No. 18-64, at 7 (rec. Feb. 16, 2023) (NASNA LBR NPRM Comments).

[203] Comtech Reply at 5 ("[D]elays due to unnecessary disputes with ILEC/RLEC OSPs and Legacy 911 Providers… inhibit consumers' access to NG911 services.").

[204] NASNA LBR NPRM Comments at 7.

[205] *Id.* at 7.

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

[207] The Pennsylvania Emergency Mgmt. Agency, for example, notes that it must work with each incumbent LEC operating in the state of Pennsylvania to determine costs and delivery to the NG911 system. Pennsylvania Emergency Mgmt. Agency Comments at 4. Comtech similarly notes that it must repeatedly negotiate "the same points of contention with Legacy 911 Providers and OSPs for each and every NG911 deployment location." Comtech Comments at 2. Iowa notes that it would have to work with 150 carriers, with 150 different cost methods to transition to direct SIP. Iowa Dept. of Homeland Security and Emergency Mgmt. Comments at 2.

[208] For example, the Pennsylvania Emergency Mgmt. Agency states that it is "currently experiencing difficulties in this process that may impact Pennsylvania's transition to NG911 service and extend the period of time 911 authorities are paying for both legacy and NG911 services at the same time. Pennsylvania Emergency Mgmt. Agency Comments at 4.

[209] Comtech Reply at 5.

other benefits that would result from the proposed actions in this proceeding, and to the extent possible, the estimated monetary or other value of such benefits.

69. *Feasibility and Costs of Implementation.* To determine whether the proposed requirements are reasonable, we must determine whether they are technically feasible and do not impose costs that exceed their benefits. Because commenters note issues only with specific providers,[210] we assume that some wireline, CMRS, interconnected VoIP, and Internet-based TRS providers have connected to states' NG911 networks. We also assume that some wireline, interconnected VoIP, and Internet-based TRS providers have connected via IP to state's NG911 networks. We therefore tentatively conclude that the actions we propose are technically feasible and seek comment on this conclusion. The record does not currently contain detailed information on costs required for wireline, CMRS, and interconnected VoIP providers to connect to NG911 networks six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority, whichever is later. The record also does not contain detailed information on costs required for wireline and interconnected VoIP providers to provide IP-based service six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority, whichever is later. In addition, the record does not contain detailed information on the costs required for Internet-based TRS providers to connect to NG911 networks or provide IP-based service twelve months from the effective date of the IP service delivery requirement, or twelve months after a valid request for IP-based service by a state or local 911 authority, whichever is later. Accordingly, we seek comment on the level and types of costs that would be imposed by the implementation of our proposed rules, including costs for hardware, software, services, or transport, or other costs to wireline, CMRS, interconnected VoIP, and Internet-based TRS providers or for state and local 911 authorities. We seek comment on the amount of those costs and ask commenters to provide sufficiently detailed information to allow accurate cost calculations.

70. *Cost Estimates.* Although the proposed rulemaking may incur additional costs to wireline, CMRS, interconnected VoIP, and Internet-based TRS providers through 1) the requirement for wireline, interconnected VoIP, and Internet-based TRS providers to deliver 911 calls in IP-based format to 911 facilities and 2) the requirement for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to deliver 911 traffic to the point(s) designated by the 911 authority, we believe these costs are relatively small. Our initial estimate of the upper bound of these costs is approximately $103,000 in one-time costs and $11.6 million in recurring annual costs. We outline those costs below and seek comment on our cost estimates.

71. The cost of moving the point for delivery of 911 traffic for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to a point designated by the 911 authority, such as an ESInet, occurs only once. The cost of changing connecting points should be insignificant for transporters. To estimate the maximum of this one-time cost, we assume that all of the 2,327 wireline, CMRS, interconnected VoIP, and Internet-based TRS providers' 911 calls must be reconfigured to connect to ESInets.[211] This is an overestimate because some providers already are connected to ESInets. We assume that each provider needs at most one hour of work by a technician to change connection

[210] Comtech Reply at 2-3; Pennsylvania Emergency Mgmt. Agency at 4.

[211] *See* FCC, Office of Economics and Analytics, Industry Analysis Division, Voice Telephone Services: Status as of June 30, 2021 at 10, Table 2 (August 2022), https://docs.fcc.gov/public/attachments/DOC-385814A1.pdf%20 (OEA Voice Telephone Service Status) (finding that as of June 2021, there were 2,256 wireline end-user switched access lines and interconnected VoIP subscriptions providers and 61 mobile telephony providers). There are 10 certified Internet-based TRS providers. FCC, *Internet-Based TRS Providers*, https://www.fcc.gov/general/internet-based-trs-providers (last visited May 16, 2023).

points.[212] We use $30 per hour as the wage for workers who move the connection points.[213] Marking up this wage by 45% to account for benefits, we arrive at a total of $44 per hour.[214] We therefore estimate that the upper bound of one-time costs is $103,000.[215]

72. Ongoing costs will be incurred by the small percentage of providers that do not yet have IP switching facilities for voice traffic.[216] According to NTCA, 91.5% of respondents to the NTCA Broadband/Internet Availability Survey Report, which we assume are rural wireline providers, indicate that they already have IP switching facilities for voice traffic in their networks, and therefore 8.5% do not.[217] As a result, the cost of converting 911 calls from TDM format to IP format would only be imposed on 8.5% of rural wireline providers. We assume the percentage of non-rural telecommunications wireline providers without IP-switching capability to be similar or smaller. Among the 947 local exchange telephone service providers,[218] we therefore estimate that at most 81 providers (8.5% of 947) may need to hire a third-party to transport their TDM calls in IP format to the ESInets.[219] The cost of adding these 81 providers to existing available transport services would not be particularly burdensome. To estimate the cost of additional transport service, we make several assumptions. First, we assume that the 81 providers are evenly spread across 56 U.S. states, commonwealths, and territories.[220] This would yield an additional 1.45 providers (81/56) per state. That is, we assume it would require adding 1.45 providers and 28,281 calls per year into existing transport services available in each state or territory.[221] Hiring an additional

[212] Based on the FCC internal engineering staff's estimate, changing an IP-based demarcation point requires system reconfiguration that will take no more than 30 minutes to complete. We double the amount of time to allow for variation in the time it may require across service providers.

[213] We use the Bureau of Labor Statistics average wage for telecommunications equipment installers and repairers, except line installers for the telecommunications industry, which they estimate at $30.37, which we round to $30 to avoid false precision. *See* Bureau of Labor Statistics, *Occupational Employment Statistics*, https://www.bls.gov/oes/current/oes492022.htm (last visited May 16, 2023).

[214] According to the Bureau of Labor Statistics, as of September, 2022, civilian wages and salaries averaged $28.88/hour and benefits averaged $12.98/hour. Total compensation therefore averaged $28.88 + $12.98 = $41.86. *See* Press Release, Bureaus of Labor Statistics, Employer Costs for Employee Compensation – September 2022 (Dec. 15, 2022), https://www.bls.gov/news.release/pdf/ecec.pdf. Total compensation therefore averaged $28.88 + $12.98 = $41.86. *Id.* Using these figures, benefits constitute a markup of $12.98/$28.88 = 45%. We therefore markup wages by 45% to account for benefits. $30 x 1.45 = $43.50, which we round to $44.

[215] One hour per provider x $44/hour x 2,327 providers = $102,388, which we round to $103,000.

[216] Since VoIP and Internet-based TRS providers are already transmitting calls via IP, we assume that they incur no additional cost to comply with the requirement of transmitting 911 calls in IP format.

[217] NTCA 2022 Broadband Survey Report at 4.

[218] *See* OEA Voice Telephone Service Status, at 10, Table 2 (As of June 2021, there were 947 providers providing local exchange telephone service (Switched Access Lines).).

[219] We multiply 947 providers by 8.5% (the percent of providers that may not have IP switching facilities) to arrive at 81 providers that may need to hire a third-party to transport their 911 calls [947 x 8.5% = 80.495, rounded up to 81].

[220] This includes 50 states, Washington D.C., American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands.

[221] Per the Fourteenth Annual 911 Fee Report, forty-seven states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands reported a cumulative total of 220,107,525 voice calls of all types during the 2021 annual period. Fourteenth Annual Fee Report at 12, para. 14. According to NENA, more than 80% of 911 calls in the U.S. each year are from wireless devices. Therefore 20% of 220,107,525 calls, or 44,034,105 calls are generated via wireline or interconnected VoIP [220,107,525 x 20% = 44,034,105]. Divide 44,034,105 calls by a total of 2,256 wireline and interconnected VoIP providers, each provider passes an average of approximately 19,504 call per year [44,034,105/2256 = 19,503.6, rounded up to 19,504]. Multiply 19,504 by 1.45 providers, the transport (continued….)

full-time telecommunications technician in one transport service provider per state should be more than sufficient to handle the increase in calls.[222] The annual wage, including benefits of a telecommunication technician would be $44 per hour, as above, multiplied by 2080 hours, for a total of $91,520 for each state. Given an estimated average of 55.53% gross margin for the communications service industry,[223] the annual cost to providers would be $205,802 for each state.[224] Multiplying the annual cost per state by 56 states and territories, we estimate a total annual recurring cost of $11,524,912, which we round to $11.6 million per year. We note that small providers could trim costs by leveraging transport procurement through small provider consortia or entering into interconnectivity agreements with larger providers.[225] We also note that these annual costs will fall over time due to ongoing modernization of legacy 911 systems. We seek comment on all these estimates.

73. *Costs Imposed on Rural Local Exchange Carriers.* Some rural LEC commenters oppose NASNA's proposal to define the ESInet gateway as the demarcation point for delivery of the NG911 services, arguing that this framework would impose substantial and unrecoverable costs on rural service providers.[226] For example, the South Carolina Telephone Coalition notes that imposing additional costs for 911 transport would create an unfair burden on rural providers and their customers.[227] In addition, the South Carolina Telephone Coalition notes that the costs to connect to IP points of interconnection would involve "hiring third-party transport providers to deliver . . . traffic to two diverse points."[228] NTCA calls these "significant new transport costs."[229]

74. We seek comment on specifics of these anticipated costs under our proposed rules. What are the estimated initial and ongoing costs for a wireline provider to connect to an NG911 network via IP? For wireline, interconnected VoIP, and Internet-based TRS providers that have already transitioned to providing 911 traffic to the ESInet via IP or via legacy network gateway, what are the costs to provide such service? What variables impact the costs to different providers? Are costs to connect to NG911 significantly different for different providers? If so, how? We seek cost information associated with different use cases. In addition, we note that many rural incumbent LECs offer broadband in addition to telephony, and these providers likely have already established IP peering relationships with other

(Continued from previous page)
service providers in each state or territory may see an increase of 28,281 calls [19,504 x 1.45 = 28,280.8, rounded up to 28,281].

[222] Assuming that, on an annual basis, a full-time, full-year technician works 2,080 hours to handle the additional 28,281 calls, each technician would have to support only 14 calls per hour on average [28,281/2,080 = 13.6, rounded up to 14]. We believe that our assumption of hiring a technician per state to handle these additional 911 calls is an overestimate given that converting and transporting these calls are largely automated with little need of personnel involvement once the providers' calls are routed to the transport service providers' site.

[223] According to Dr. Aswath Damodarn at NYU Stern School of Business, the gross margin for the telecommunication services sector is 55.53%. *See* New York University, *Margins by Sector* (*US*), https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html (last visited May 16, 2023).

[224] We assume that these wireline service providers need to hire a third-party to provide this transport service, and we further assume that these third-party transport service providers mark up their service, so the gross profit margin is 55.53% according to the estimated industry average. If the cost is $91,520, the after mark-up price of transport service would be $205,802 [=$91,520/(1 – 55.53%) = 205,802]. In other words, if a third-party transport provider charges $205,802 to provide the additional services, it retains $114,282 [=$205,802*55.53%] as its gross profit after paying $91,520 in wages and benefits to the additional technician it has to hire.

[225] NASNA Reply at 3-4.

[226] NTCA Reply at 3; South Carolina Telephone Coalition Reply at 2.

[227] South Carolina Telephone Coalition Reply at 2-3.

[228] South Carolina Telephone Coalition Reply at 5.

[229] NTCA Reply at 5.

providers.[230] NASNA asserts that small providers' transition to IP "diminishes the argument that the distance to ESInet point of interconnection [POI] is cost prohibitive."[231] We seek comment on this assertion. We tentatively conclude that the costs for rural LECs providing broadband to transmit 911 traffic via IP to a state's NG911 point of interconnection would be small, and we seek comment on this tentative conclusion. We also seek comment on costs for IP transport to points of interconnection located in adjacent states.[232] In addition, we seek comment and specific data on wireline, interconnected VoIP, and Internet-based TRS provider costs to implement NG911 in rural areas, including any costs that could be avoided or reduced. Further, we seek comment on any additional costs to transition to NG911 for a rural LEC that already provides broadband service.

75. *Impact of Proposed Approach on Universal Service.* Some commenters argue that requiring the delivery of IP 911 traffic to specific points would place universal service in jeopardy through increased costs.[233] With respect to section 254 of the Act, we do not believe that our proposed rules would cause injury to the principles of universal service, given that states would remain free to implement cost recovery mechanisms as they deem necessary. As NASNA points out, costs to small providers may also be addressed by other means, including "collaborative consortiums of smaller providers to leverage transport procurement, interconnectivity agreements with larger providers, and the providers' transition to IP."[234] We seek comment on the feasibility of these measures and their capability to defray costs for small providers. In addition, we seek comment on the impacts of our proposed rules on the availability of universal service and universal service support under section 254 of the Act.

76. *Benefits Expected to Exceed Costs*. The proposed actions would have important benefits outlined above, as well as impose some costs. We tentatively conclude that the Commission's proposals would produce benefits far exceeding the costs imposed on wireline, CMRS, interconnected VoIP, and Internet-based TRS providers, and we seek comment on this tentative conclusion.

IV. PROCEDURAL MATTERS

77. *Paperwork Reduction Act*. This *Notice of Proposed Rulemaking* may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business

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[230] *See, e.g.,* NTCA, Entry Into Telecommunications: Rural ILEC Perspective at slide 4 (June 25, 2015) https://www.justice.gov/atr/entry-telecommunications-rural-ilec-perspective (92% of Independent Rural Carriers offer Internet); NTCA 2022 Broadband Survey Report at 4 (The "vast majority" of respondents (91.5%) to the NTCA's annual survey "indicate that they have IP switching facilities for voice traffic in their networks. Just over one-half of respondents (53.4%) still use TDM switching facilities for voice traffic within some portion of their ILEC networks." The response rate to this survey was 38.3%.); *see Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime,* Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11925-27, paras. 101-12 (2018) (applying the requirement to provide broadband to those carriers that have not adopted one of the Alternative Connect America Cost Model support programs or the Alaska Plan).

[231] NASNA Reply at 3-4. *But see* NTCA *Ex Parte* at 4 (questioning the relationship between a provider's ability to originate traffic in IP format or provide broadband services and the costs for that provider to transmit 911 traffic in IP format outside the boundaries of its network).

[232] South Carolina Telephone Coalition Reply at 5 (indicating that the two diverse points for Comtech's ESInet implementation in South Carolina are in adjacent states).

[233] NTCA Comment at 4; South Carolina Telephone Coalition at 3.

[234] NASNA Reply at 3-4.

Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[235]

78. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[236] 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."[237] Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is contained in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

79. *Ex Parte Presentations – Permit-But-Disclose*. The proceeding this *Notice of Proposed Rulemaking* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[238] 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.

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

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
    - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S.

[235] 44 U.S.C. § 3506(c)(4).

[236] 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).

[237] 5 U.S.C. § 605(b).

[238] 47 CFR § 1.1200 *et seq.*

Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, D.C., 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

81. *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).

82. *Additional Information*. For additional information on this proceeding, contact Rachel Wehr, Rachel.Wehr@fcc.gov or 202-418-1138, or Brenda Boykin, Brenda.Boykin@fcc.gov or 202-418-2062, of the Public Safety and Homeland Security Bureau, Policy and Licensing Division.

V. ORDERING CLAUSES

83. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 201, 214, 222, 225, 251(e), 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, 214, 222, 225, 251(e), 301, 303, 316, 332; the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, 615b; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 47 U.S.C. § 615c, that this *Notice of Proposed Rulemaking* IS ADOPTED.

84. 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 *Notice of Proposed Rulemaking* on or before 30 days after publication in the Federal Register, and reply comments on or before 60 days after publication in the Federal Register.

85. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

Proposed Rules

The Federal Communications Commission proposes to amend part 9 of Title 47 of the Code of Federal Regulations as follows:

PART 9 – 911 REQUIREMENTS

1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, and Section 902 of Title IX, Division FF, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

2. Amend § 9.1 by revising it to read as follows:

§ 9.1 Purpose.

The purpose of this part is to set forth the 911, E911, and Next Generation 911 service requirements and conditions applicable to telecommunications carriers (subpart B); commercial mobile radio service (CMRS) providers (subpart C); interconnected Voice over Internet Protocol (VoIP) providers (subpart D); providers of telecommunications relay services (TRS) for persons with disabilities (subpart E); multi-line telephone systems (MLTS) (subpart F); and Mobile-Satellite Service (MSS) providers (subpart G). The rules in this part also include requirements to help ensure the resiliency, redundancy, and reliability of communications systems, particularly 911 and E911 networks and/or systems (subpart H), acceptable obligations and expenditures of 911 fees (subpart I), and Next Generation 911 obligations (subpart J).

3. Revise § 9.4 to read as follows:

§ 9.4 Obligation to transmit 911 calls.

Except as otherwise provided in subpart J, all telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 9.5.

4. Add Subpart J to read as follows:

Subpart J – Next Generation 911 Obligations

Sec.

9.27 Applicability.

9.28 Definitions.

9.29 Next Generation 911 Transition Requirements and Cost Allocation.

9.30 Valid Request.

§ 9.27 Applicability.

The rules in this subpart apply to wireline, commercial mobile radio service, interconnected Voice over Internet Protocol service providers, and Internet-based Telecommunications Relay Service providers.

§ 9.28 Definitions.

911 Authority. The state, territorial, regional, Tribal, or local agency or entity with the authority and responsibility under applicable law to designate the point(s) to receive emergency calls.

Emergency Services Internet Protocol Network (ESInet). An Internet Protocol (IP)-based network managed by public safety authorities and used for emergency services communications, including Next Generation 911.

§ 9.29 Next Generation 911 Transition Requirements and Cost Allocation.

(a) *Wireline Providers.*

(1) By [six months from the effective date of paragraph (a) of this section], or within 6 months of a valid request as defined in § 9.30 for Internet Protocol-based service by the 911 Authority, whichever is later:

(i) Wireline providers shall transmit all 911 calls to the point(s) designated by the 911 Authority, including to a PSAP, to a designated statewide default answering point, to an appropriate local emergency authority, or to an ESInet or other designated point(s) that allow emergency calls to be answered.

(ii) Wireline providers shall complete all translation and routing to deliver all 911 calls, including associated location information, in the requested Internet Protocol-based format, to an ESInet or other designated point(s) that allow emergency calls to be answered.

(2) 911 Authorities may enter into agreements with wireline providers that establish an alternate time frame for meeting the requirements of paragraph (a)(1)(ii) of this section. The wireline providers must notify the Commission of the dates and terms of the alternate time frame within 30 days of the parties' agreement.

(b) *Commercial Mobile Radio Service Providers.* By [six months from the effective date of this paragraph (b)], or within 6 months of a valid request as defined in § 9.30 for Internet Protocol-based service by the 911 Authority, whichever is later, commercial mobile radio service (CMRS) providers shall transmit all 911 calls to the point(s) designated by the 911 Authority, including to a PSAP, to a designated statewide default answering point, to an appropriate local emergency authority, or to an ESInet or other designated point(s) that allow emergency calls to be answered.

(c) *Interconnected Voice over Internet Protocol Providers*.

(1) By [six months from the effective date of paragraph (c) of this section], or within 6 months of a valid request as defined in § 9.30 for Internet Protocol-based service by the 911 Authority, whichever is later:

(i) Interconnected Voice over Internet Protocol (VoIP) providers shall transmit all 911 calls to the point(s) designated by the 911 Authority, including to a PSAP, to a

designated statewide default answering point, to an appropriate local emergency authority, or to an ESInet or other designated point(s) that allow emergency calls to be answered.

(ii) Interconnected VoIP providers shall complete all translation and routing to deliver all 911 calls, including associated location information, in the requested Internet Protocol-based format, to an ESInet or other designated point(s) that allow emergency calls to be answered.

(2) 911 Authorities may enter into agreements with interconnected VoIP providers that establish an alternate time frame for meeting the requirements of paragraph (c)(1)(ii) of this section. The interconnected VoIP providers must notify the Commission of the dates and terms of the alternate time frame within 30 days of the parties' agreement.

(d) *Internet-based Telecommunications Relay Service Providers*.

(1) By [twelve months from the effective date of paragraph (d) of this section], or within twelve months of a valid request as defined in § 9.30 for Internet Protocol-based service by the 911 Authority, whichever is later:

(i) Internet-based Telecommunications Relay Service (TRS) providers shall transmit all 911 calls to the point(s) designated by the 911 Authority, including to a PSAP, to a designated statewide default answering point, to an appropriate local emergency authority, or to an ESInet or other designated point(s) that allow emergency calls to be answered.

(ii) Internet-based TRS providers shall complete all translation and routing to deliver all 911 calls, including associated location information, in the requested Internet Protocol-based format, to an ESInet or other designated point(s) that allow emergency calls to be answered.

(2) 911 Authorities may enter into agreements with Internet-based TRS providers that establish an alternate time frame for meeting the requirements of paragraph (d)(1)(ii) of this section. The Internet-based TRS providers must notify the Commission of the dates and terms of the alternate time frame within 30 days of the parties' agreement.

(e) *Cost allocation*. In the absence of agreement by states or localities on alternative cost recovery mechanisms, wireline providers, interconnected VoIP providers, Internet-based TRS providers, and CMRS providers are responsible for the costs of transmitting 911 calls to the point(s) designated by a 911 Authority, including any costs associated with completing the translation and routing necessary to deliver such calls and associated location information in the requested Internet Protocol-based format.

(f) This section 9.29 contains information collection and recordkeeping requirements. Compliance will not be required until after review by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing the compliance date and revising this section accordingly.

§ 9.30 Valid Request.

Valid request means that:

(a) The requesting 911 Authority is, and certifies that it is, technically ready to receive 911 calls in the Internet Protocol-based format requested;

(b) The requesting 911 Authority has been specifically authorized to accept 911 calls in the Internet Protocol-based format requested; and

(c) The requesting 911 Authority has provided notification to the provider that it meets the requirements in paragraphs (a) and (b) of this section. Registration by the requesting 911 Authority in a database made available by the Commission in accordance with requirements

established in connection therewith, or any other written notification reasonably acceptable to the provider, shall constitute sufficient notification for purposes of § 9.29.

(d) This section 9.30 contains information collection and recordkeeping requirements. Compliance will not be required until after review by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing the compliance date and revising this section accordingly.

Appendix B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rule Making* (*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 in the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, we propose to take steps that will advance the nationwide transition to Next Generation 911 (NG911).[4] Like communications networks generally, dedicated 911 networks are evolving from Time Division Multiplexing (TDM)-based architectures to Internet Protocol (IP)-based architectures. With the transition to NG911, 911 authorities will replace the circuit-switched architecture of legacy 911 networks with IP-based technologies and applications, which provide new capabilities and improved interoperability and system resilience. Most states have invested significantly in NG911, but some report that they are experiencing delays in providers connecting to these IP-based networks. As a result of these delays, state and local 911 authorities incur prolonged costs because of the need to maintain both legacy and IP networks during the transition. Managing 911 traffic on both legacy and IP networks may also result in increased vulnerability and risk of 911 outages.

3. In the *Notice*, we propose to expedite the NG911 transition by adopting certain requirements that would apply to wireline, Commercial Mobile Radio Service (CMRS), interconnected Voice over Internet Protocol (VoIP), and Internet-based Telecommunications Relay Service (TRS) providers as state and local 911 authorities transition to IP-based networks and develop the capability to support NG911 elements and functions.

- First, we propose to require wireline, interconnected VoIP, and Internet-based TRS providers to complete all translation and routing to deliver 911 calls, including associated location information, in the requested IP-based format to an Emergency Services IP network (ESInet) or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have certified the capability to accept IP-based 911 communications. Wireline and interconnected VoIP providers would be subject to this requirement six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority, whichever is later. Internet-based TRS providers would be subject to this requirement twelve months from the effective date of the IP service delivery requirement, or twelve months after a valid request for IP-based service by a state or local 911 authority, whichever is later. This proposal is similar to

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] For purposes of this Initial Rules Flexibility Analysis (IRFA), we use the term Next Generation 911 (NG911) to refer generally to the digital Internet Protocol (IP)-based 911 systems that are replacing analog time division multiplexing (TDM) 911 infrastructure.

what was proposed for CMRS and covered text providers in our recent proceeding on wireless location-based routing.[5]

- Second, as state and local 911 authorities transition to IP-based networks, we propose to require wireline, interconnected VoIP, CMRS, and Internet-based TRS providers to transmit all 911 calls to destination point(s) in those networks designated by a 911 authority, including to a public safety answering point (PSAP), designated statewide default answering point, local emergency authority, ESInet, or other point(s) designated to receive 911 calls that allow emergency calls to be answered, upon request of 911 authorities who have certified the capability to accept IP-based 911 communications.

- Third, we propose that in the absence of agreements by states or localities on alternative cost recovery mechanisms, wireline, interconnected VoIP, CMRS, and Internet-based TRS providers must cover the costs of transmitting 911 calls to the point(s) designated by a 911 authority, including any costs associated with completing the translation and routing necessary to deliver such calls and associated location information to the designated destination point(s) in the requested IP-based format. Under this proposal, states and localities would remain free to establish alternative cost allocation arrangements with providers. However, in the absence of such arrangements, providers would be presumptively responsible for the costs associated with delivering traffic to the destination point(s) identified by the appropriate 911 authority.

4. Together, these proposals are intended to expedite the NG911 transition and help ensure that the nation's 911 system functions effectively and with the most advanced capabilities available. In addition, they respond to the petition filed in 2021 by the National Association of State 911 Administrators (NASNA)[6] urging the Commission to take actions to resolve uncertainty and disputes between originating service providers (OSPs)[7] and state 911 authorities regarding the NG911 transition. We seek to create a consistent framework for ensuring that providers (including wireline, CMRS, interconnected VoIP, and Internet-based TRS providers) take the necessary steps to implement the transition to NG911 capability in coordination with state and local 911 authorities. We also seek to align the NG911 transition rules for wireline, interconnected VoIP, and Internet-based TRS providers with similar requirements we have proposed for CMRS and covered text providers in the *Location-Based Routing NPRM*, thereby promoting consistency across service platforms. Finally, our demarcation point and cost allocation proposals seek to address what NASNA described in its Petition as "the critical component, and biggest regulatory roadblock, to transitioning to NG911 services."[8]

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[5] *See Location-Based Routing for Wireless 911 Calls*, Notice of Proposed Rulemaking, PS Docket No. 18-64, FCC 22-96, 2022 WL 17958801, at *2, para. 4 (Dec. 22, 2022) (*Location-Based Routing NPRM*). The Commission defines the term "covered text provider" as including "all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones." 47 CFR § 9.10(q)(1).

[6] Petition for Rulemaking; Alternatively, Petition for Notice of Inquiry, CC Docket No. 94-102, PS Docket Nos. 18-64, 18-261, 11-153, and 10-255 (filed Oct. 19, 2021), https://www.fcc.gov/ecfs/document/1019188969473/1 (NASNA Petition).

[7] NASNA and other commenters on NASNA's Petition use the term "originating service providers" to refer to all service providers that originate 911 calls and are subject to part 9 of our rules, including wireline, wireless, and interconnected Voice over Internet Protocol (VoIP) providers. *See, e.g.*, NASNA Petition at 2. For purposes of this IRFA, we use the term "originating service providers" (OSPs) to refer collectively to wireline, wireless, and interconnected VoIP providers, but not to other service providers covered by part 9 (e.g., telecommunications relay and mobile satellite services).

[8] NASNA Petition at 6.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 2, 4(i), 201, 214, 222, 225, 251(e), 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, 214, 222, 225, 251(e), 301, 303, 316, 332; the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, 615b; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 47 U.S.C. § 615c.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12]

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[13] 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.[14] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[15]

8. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[16] 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.[17] Nationwide, for tax year 2020, there

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[9] 5 U.S.C. § 603(b)(3).

[10] *Id*. § 601(6).

[11] *See id*. § 601(3) (incorporating by reference the definition of "small business concern" in Section 3 of the Small Business Act, which is codified at 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[12] 15 U.S.C. § 632.

[13] *See* 5 U.S.C. § 601(3)-(6).

[14] *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).

[15] *Id*.

[16] *See* 5 U.S.C. § 601(4).

[17] 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-

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were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[18]

9. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[19] U.S. Census Bureau data from the 2017 Census of Governments[20] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[21] Of this number, there were 36,931 general purpose governments (county,[22] municipal, and town or township[23]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[24] with enrollment populations of less than 50,000.[25] 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."[26]

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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.

[18] *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 were extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. These data do not include information for Puerto Rico.

[19] *See* 5 U.S.C. § 601(5).

[20] *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.

[21] *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.

[22] *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.

[23] *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.

[24] *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.

[25] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data do not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts are included in the special purpose governments category.

10. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

11. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[27] 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.[28] 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.[29] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[30] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[31] Of those firms, 1,039 had revenue of less than $25 million.[32] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

12. Advanced Wireless Services (AWS) - (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3); 2000-2020 MHz and 2180-2200 MHz (AWS-4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services.[33] Wireless Telecommunications Carriers (except Satellite)[34] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[35] U.S. Census Bureau data for

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[26] 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.

[27] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[28] *Id.*

[29] *Id*.

[30] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[31] *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.

[32] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[33] *See* 47 CFR § 27.1(b).

[34] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[35] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

2017 show that there were 2,893 firms that operated in this industry for the entire year.[36] Of this number, 2,837 firms employed fewer than 250 employees.[37] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

13. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses.[38] The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[39] Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.[40] In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.[41]

14. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

15. *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.[42] 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

[36] *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.

[37] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[38] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AD, AH, AT, AW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[39] *See* 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

[40] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 66: Advanced Wireless Services (AWS-1), Summary, Spreadsheets, https://www.fcc.gov/sites/default/files/wireless/auctions/66/charts/66cls2.pdf.

[41] See Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97, Public Notice, DA-15-131, Attachments A-B, (Auction No. 97) (January 30, 2015).

[42] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

services.[43] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[44] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[45]

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[46] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[47] Of this number, 2,964 firms operated with fewer than 250 employees.[48] 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.[49] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[50] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *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[51] is the closest industry with an SBA small business size standard.[52] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[53] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[54] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[55] Of this number, 2,964 firms operated with fewer than

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[43] *Id.*

[44] *Id.*

[45] 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 are not included in this industry.

[46] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[47] *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.

[48] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[49] 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.

[50] *Id.*

[51] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[52] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[53] 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.

[54] *Id.*

[55] *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,

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250 employees.[56] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[57] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[58] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *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.[59] Wired Telecommunications Carriers[60] 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.[61] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[62] Of this number, 2,964 firms operated with fewer than 250 employees.[63] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.[64] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[65] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *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[66] is the closest industry with an SBA small business size standard.[67]

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https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[56] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[57] 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.

[58] *Id.*

[59] 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.

[60] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[61] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[62] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[63] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[64] 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.

[65] *Id.*

[66] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[67] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[68] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[69] Of this number, 2,964 firms operated with fewer than 250 employees.[70] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[71] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[72] 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.

20. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[73] is the closest industry with a SBA small business size standard.[74] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[75] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[76] Of this number, 2,964 firms operated with fewer than 250 employees.[77] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.[78] 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.

21. *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.[79] The Telecommunications Resellers industry comprises

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[68] *Id.*

[69] *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.

[70] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[71] 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.

[72] *Id.*

[73] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[74] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[75] *Id.*

[76] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[77] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[78] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[79] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.[80] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[81] Mobile virtual network operators (MVNOs) are included in this industry.[82] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[83] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[84] Of that number, 1,375 firms operated with fewer than 250 employees.[85] 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.[86] Of these providers, the Commission estimates that 289 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.

22. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[88] The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).[89] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[90] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[91] Of this number, 2,837 firms employed fewer than 250 employees.[92] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. Based on Commission data as of November 2021, there were approximately 5,060 active

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[80] *Id.*

[81] *Id*.

[82] *Id*.

[83] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[84] *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.

[85] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[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* 47 CFR § 24.200.

[89] *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.

[90] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[91] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[92] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

licenses in the Broadband PCS service.[93] The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[94] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[95]

24. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

25. Narrowband Personal Communications Services. Narrowband Personal Communications Services *(Narrowband PCS)* are PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.[96] PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.[97] Wireless Telecommunications Carriers (*except* Satellite)[98] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[99] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[100] Of this number, 2,837 firms employed fewer than 250 employees.[101] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

26. According to Commission data as of December 2021, there were approximately 4,211

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[93] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[94] *See* 47 CFR § 24.720(b).

[95] *See* Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, https://www.fcc.gov/auctions.

[96] *See* 47 CFR § 24.5.

[97] *Id*.

[98] *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.

[99] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[100] *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.

[101] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

active *Narrowband PCS* licenses.[102] The Commission's small business size standards with respect to *Narrowband PCS* involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[103] A "very small business" is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[104] Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses.[105] One of the winning bidders claiming a small business status classification in these *Narrowband PCS* license auctions had an active license as of December 2021.[106]

27. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

28. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[107] Wireless Telecommunications Carriers (*except* Satellite)[108] is the closest industry with a SBA small business size standard applicable to this service. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[109] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[110] Of this

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[102] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[103] *See* 47 CFR § 24.321(a)(1)-(2).

[104] *Id.*

[105] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 41: Narrowband PCS, Summary, Closing Charts, License By Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/41/charts/41cls2.pdf; Auction 50: Narrowband PCS, Summary, Closing Charts, License By Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/50/charts/50cls2.pdf.

[106] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[107] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR §§ 22.1001-22.1037.

[108] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[109] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[110] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

number, 2,837 firms employed fewer than 250 employees.[111] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small. Additionally, based on Commission data, as of December 2021, there was one licensee with an active license in this service.[112] However, since the Commission does not collect data on the number of employees for this service, at this time we are not able to estimate the number of licensees that would qualify as small under the SBA's small business size standard.

29. *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.[113] 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.[114] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[115] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[116] Of this number, 624 firms had fewer than 250 employees.[117] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

30. *Rural Radiotelephone Service.* Neither the Commission nor the SBA have developed a small business size standard specifically for small businesses providing Rural Radiotelephone Service. Rural Radiotelephone Service is radio service in which licensees are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means.[118] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[119] Wireless Telecommunications Carriers (*except* Satellite),[120] is the closest applicable industry with a SBA small business size standard. The SBA small business size standard for Wireless Telecommunications Carriers (*except* Satellite) classifies firms having 1,500 or fewer employees as small.[121] For this industry, U.S. Census Bureau data

[111] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[112] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CO; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[113] *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.

[114] *Id*.

[115] *See* 13 CFR § 121.201, NAICS Code 334220.

[116] *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.

[117] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[118] 47 CFR § 22.99.

[119] BETRS is defined in 47 CFR §§ 22.757, 22.759.

[120] *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.

[121] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

for 2017 show that there were 2,893 firms that operated for the entire year.[122] Of this total, 2,837 firms employed fewer than 250 employees.[123] Thus under the SBA size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. Based on Commission data as of December 27, 2021, there were approximately 119 active licenses in the Rural Radiotelephone Service.[124] The Commission does not collect employment data from these entities holding these licenses and therefore we cannot estimate how many of these entities meet the SBA small business size standard.

31. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[125] Wireless Telecommunications Carriers (*except* Satellite)[126] is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[127] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[128] Of this number, 2,837 firms employed fewer than 250 employees.[129] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

32. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[130]

33. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction

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[122] *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.

[123] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[124] Based on a FCC Universal Licensing System search on December 27, 2021. https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[125] *See* 47 CFR §§ 27.1–27.1607.

[126] *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.

[127] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[128] *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.

[129] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[130] *See* 47 CFR §§ 27.201–27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

34. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[131] 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.[132] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[133] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[134] Of that number, 2,837 firms employed fewer than 250 employees.[135] 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.[136] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[137] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

35. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[138] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[139] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[140] Of this number, 2,837 firms employed fewer than 250 employees.[141] Additionally, based

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[131] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[132] *Id.*

[133] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[134] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[135] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[136] 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.

[137] *Id.*

[138] *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.

[139] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[140] *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.

[141] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[142] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[143] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

36. *700 MHz Guard Band Licensees*. The 700 MHz Guard Band encompasses spectrum in 746-747/776-777 MHz and 762-764/792-794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite)[144] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[145] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[146] Of this number, 2,837 firms employed fewer than 250 employees.[147] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

37. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.[148] The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[149] Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses.[150] None of the winning bidders claiming a small business status classification in these 700 MHz

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[142] 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.

[143] *Id.*

[144] *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.

[145] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[146] *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.

[147] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[148] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[149] *See* 47 CFR § 27.502(a).

[150] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 33: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/33/charts/33cls2.pdf, Auction 38: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/38/charts/38cls2.pdf.

Guard Band license auctions had an active license as of December 2021.[151]

38. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

39. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[152] Wireless Telecommunications Carriers (*except* Satellite)[153] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[154] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[155] Of this number, 2,837 firms employed fewer than 250 employees.[156] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

40. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[157] The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the

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[151] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[152] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44/factsheet, https://www.fcc.gov/auction/49/factsheet, https://www.fcc.gov/auction/60/factsheet.

[153] *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.

[154] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[155] *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.

[156] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[157] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[158] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[159] twenty-six winning bidders claiming a small business classification won 214 licenses,[160] and three winning bidders claiming a small business classification won all five auctioned licenses.[161]

41. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, 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.

42. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.[162] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[163] Wireless Telecommunications Carriers (*except* Satellite)[164] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[165] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[166] Of that number, 2,837 firms employed fewer than 250 employees.[167] Thus,

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[158] *See* 47 CFR § 27.702(a)(1)-(3).

[159] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[160] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[161] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

[162] *See* 47 CFR § 27.4.

[163] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73/factsheet. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[164] *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.

[165] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[166] *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.

under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

43. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[168] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[169] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[170]

44. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

45. *Wireless Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with a SBA small business size standard is Telecommunications Resellers.[171] 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.[172] Establishments in this industry resell telecommunications and they do not operate transmission facilities and infrastructure.[173] Mobile virtual network operators (MVNOs) are included in this industry.[174] Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees.[175] U.S. Census Bureau data for 2017 show that 1,386 firms in

(Continued from previous page)

[167] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[168] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[169] *See* 47 CFR § 27.502(a).

[170] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

[171] *See* U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

this industry provided resale services during that year.[176] Of that number, 1,375 firms operated with fewer than 250 employees.[177] Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

46. *Semiconductor and Related Device Manufacturing*. This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.[178] Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.[179] The SBA small business size standard for this industry classifies entities having 1,250 or fewer employees as small.[180] U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year.[181] Of this total, 673 firms operated with fewer than 250 employees.[182] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

47. *Telecommunications Relay Service (TRS) Providers*. Telecommunications relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services.[183] Internet-based TRS (*iTRS*) connects an individual with a hearing or a speech disability to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network.[184] Video Relay Service (VRS) one form of *iTRS*, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device.[185] Internet Protocol Captioned Telephone Service (IP CTS) another form of *iTRS*, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.[186] Providers must be certified by the Commission to provide VRS and IP CTS[187] and to receive

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[176] *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.

[177] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[178] *See* U.S. Census Bureau, *2017 NAICS Definition, "334413 Semiconductor and Related Device Manufacturing,"* https://www.census.gov/naics/?input=334413&year=2017&details=334413.

[179] *Id.*

[180] *See* 13 CFR § 121.201, NAICS Code 334413.

[181] *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 334413, https://data.census.gov/cedsci/table?y=2017&n=334413&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[182] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[183] 47 U.S.C. § 225(a)(3).

[184] 47 CFR § 64.601(a)(22). Except as authorized or required by the Commission, Internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected Voice over Internet Protocol service.

[185] *Id.* § 64.601(a)(51).

[186] *Id.* § 64.601(a)(23).

[187] *Id.* § 64.606(a)(2).

compensation from the TRS Fund for TRS provided in accordance with applicable rules.[188]

48. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard.[189] Internet Service Providers (ISPs) and Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry.[190] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[191] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[192] Of those firms, 1,039 had revenue of less than $25 million.[193] Based on Commission data there are ten certified *iTRS* providers.[194] The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

49. The *Notice* proposes and seeks comment on implementing new NG911 requirements for 911 voice calls, that if adopted, may impose new or modified reporting or recordkeeping, and other compliance obligations on small entities. Some of our proposed requirements contain written notification and certification requirements that will be applicable to small entities. For example, in the *Notice* we propose to require wireline, interconnected VoIP, and Internet-based TRS providers to complete all translation and routing to deliver 911 calls, including associated location information, in the requested IP-based format to an ESInet or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have certified the capability to accept IP-based 911 communications. Wireline and interconnected VoIP providers would be subject to this requirement six months from the effective date of the IP service delivery requirement, or six months after a valid request for IP-based service by a state or local 911 authority, whichever is later. Internet-based TRS providers would subject to this requirement twelve months from the effective date of the IP service delivery requirement, or twelve months after a valid request for IP-based service by a state or local 911 authority, whichever is later. Wireline, interconnected VoIP, and Internet-based TRS providers and state or local 911 authorities would be allowed to agree to alternate time frames for delivery of IP-formatted calls and associated routing information as long as the wireline, interconnected VoIP, or Internet-based TRS provider notifies the Commission of the alternate time frame within 30 days of the parties' agreement.

50. To determine whether wireline, interconnected VoIP, and Internet-based TRS providers' have received a "valid request," the criteria we proposed to constitute a valid request includes certification from a requesting local or state entity that it meets the following conditions, (1) it is technically ready to

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[188] *Id.* § 64.604(c)(5)(iii)(F).

[189] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[190] *Id*.

[191] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[192] *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.

[193] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[194] See Internet-Based TRS Providers | Federal Communications Commission (fcc.gov), https://www.fcc.gov/general/internet-based-trs-providers (last visited May 16, 2023).

receive calls and/or texts in the IP-based format requested, (2) it is specifically authorized to accept calls and/or texts in the IP-based format requested, and (3) it has provided notification to the wireline, interconnected VoIP, or Internet-based TRS providers via either a registry made available by the Commission or any other written notification reasonably acceptable to the wireline, interconnected VoIP, or Internet-based TRS provider.

51. In the *Notice*, we seek comment on whether to implement any new data collections to assist in monitoring performance and compliance with the proposed NG911 rules. For example, we ask: (1) whether to require wireline, interconnected VoIP, and Internet-based TRS providers to provide a certification of compliance with the proposed rules, and (2) if reporting would be helpful, what specific information should providers include and at what frequency we should require them to report it. We also seek information on whether the proposed rules should include requirements for disclosures to the PSAP or other state or local 911 authority in connection with compliance with the NG911 rules.

52. Our inquiry into the potential reporting obligations that may be necessary to complement our proposed NG911 rules includes requesting comment on measures the Commission could take to limit the burden of reporting on the transition to NG911. In particular, in the *Notice* we seek information on the extent that the Commission could limit the burden of any reporting requirements on businesses identified as small by the SBA. We also assess whether we need to adopt requirements and systems for reporting non-compliance with the proposed NG911 rules. While we tentatively conclude that our existing mechanisms (which would allow public safety entities and members of the public seeking to report non-compliance with the proposed rules to file complaints via the Public Safety and Homeland Security Bureau's Public Safety Support Center or the Commission's Consumer Complaint Center) should be sufficient to address any potential violations, we seek comment on this tentative conclusion.

53. Although the proposed rulemaking may impose additional costs to wireline, CMRS, interconnected VoIP, and Internet-based TRS providers as a result of (1) the requirement for wireline, interconnected VoIP, and Internet-based TRS providers to deliver 911 calls in IP-based format to 911 facilities, and (2) the requirement for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to deliver 911 traffic to the point(s) designated by the 911 authority, we believe these costs are relatively small. Our initial estimate of the upper bound of these costs for all such providers in total is approximately $103,000 in one-time costs and $11.6 million recurring annual costs. We outline the details of those costs below and seek comment on our cost estimates in the *Notice*.

54. The cost of moving the point for delivery of 911 traffic for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to a point designated by the 911 authority, such as an ESInet, occurs only once. Further, we believe the cost of changing connecting points should be insignificant for transporters. To estimate the maximum of this one-time cost, we assume that all of the 2,327 wireline, CMRS, interconnected VoIP, and Internet-based TRS providers' 911 calls must be reconfigured to connect to ESInets.[195] This is likely an overestimate because some providers already are connected to ESInets. We assume that each provider needs at most one hour of work by a technician to change connection points.[196] We use $30 per hour as the wage for workers who move the connection

[195] *See* FCC, Office of Economics and Analytics, Industry Analysis Division, Voice Telephone Services: Status as of June 30, 2021 at 10, Table 2 (August 2022), https://docs.fcc.gov/public/attachments/DOC-385814A1.pdf (OEA Voice Telephone Service Status) (finding that as of June 2021, there were 2,256 wireline end-user switched access lines and interconnected VoIP subscriptions providers and 61 mobile telephony providers). There are 10 certified Internet-based TRS providers. FCC, *Internet-Based TRS Providers*, https://www.fcc.gov/general/internet-based-trs-providers (last visited May 16, 2023).

[196] Based on the FCC internal engineering staff's estimate, changing an IP-based demarcation point requires system reconfiguration that will take no more than 30 minutes to complete. We double the amount of time to allow for variation in the time it may require across service providers.

points.[197] Marking up this wage by 45% to account for benefits, we arrive at a total of $44 per hour.[198] We therefore estimate that the upper bound of one-time costs is $103,000.[199]

55. Ongoing costs will be incurred by the small percentage of providers that do not yet have IP switching facilities for voice traffic.[200] According to NTCA, 91.5% of respondents to the NTCA Broadband/Internet Availability Survey Report, which we assume are rural wireline providers, indicate that they already have IP switching facilities for voice traffic in their networks, and therefore 8.5% do not.[201] As a result, the cost of converting 911 calls from TDM format to IP format would only be imposed on 8.5% of rural wireline providers. We assume the percentage of non-rural telecommunications wireline providers without IP-switching capability to be similar or smaller. Among the 947 local exchange telephone service providers,[202] we therefore estimate that at most 81 providers (8.5% of 947) may need to hire a third-party to transport their TDM calls in IP format to the ESInets.[203] The cost of adding these 81 providers to existing available transport services would not be particularly burdensome. To estimate the cost of additional transport service, we make several assumptions. First, we assume that the 81 providers are evenly spread across 56 U.S. states, commonwealths, and territories.[204] This would yield an additional 1.45 providers (81/56) per state. That is, we assume it would require adding 1.45 providers and 28,281 calls per year into existing transport services available in each state or territory.[205] Hiring an additional full-time telecommunications technician in one transport service provider per state should be more than

[197] We use the Bureau of Labor Statistics average wage for telecommunications equipment installers and repairers, except line installers for the telecommunications industry, which they estimate at $30.37, which we round to $30 to avoid false precision. *See* Bureau of Labor Statistics, *Occupational Employment Statistics*, https://www.bls.gov/oes/current/oes492022.htm (last visited May 16, 2023).

[198] According to the Bureau of Labor Statistics, as of September, 2022, civilian wages and salaries averaged $28.88/hour and benefits averaged $12.98/hour. Total compensation therefore averaged $28.88 + $12.98 = $41.86. *See* Press Release, Bureaus of Labor Statistics, Employer Costs for Employee Compensation – September 2022 (Dec. 15, 2022), https://www.bls.gov/news.release/pdf/ecec.pdf. Total compensation therefore averaged $28.88 + $12.98 = $41.86. *Id.* Using these figures, benefits constitute a markup of $12.98/$28.88 = 45%. We therefore markup wages by 45% to account for benefits. $30 x 1.45 = $43.50, which we round to $44.

[199] One hour per provider x $44/hour x 2,327 providers = $102,388, which we round to $103,000.

[200] Since VoIP and Internet-based TRS providers are already transmitting calls via IP, we assume that they incur no additional cost to comply with the requirement of transmitting 911 calls in IP format.

[201] NTCA 2022 Broadband Survey Report at 4.

[202] *See* OEA Voice Telephone Service Status, at 10, Table 2 (As of June 2021, there were 947 providers providing local exchange telephone service (Switched Access Lines)).

[203] We multiply 947 providers by 8.5% (the percent of providers that may not have IP switching facilities) to arrive at 81 providers that may need to hire a third-party to transport their 911 calls [947 x 8.5% = 80.495, rounded up to 81].

[204] This includes 50 states, Washington D.C., American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands.

[205] Per the Fourteenth Annual 911 Fee Report, forty-seven states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands reported a cumulative total of 220,107,525 voice calls of all types during the 2021 annual period. Fourteenth Annual Fee Report at 12, para. 14. According to NENA, more than 80% of 911 calls in the U.S. each year are from wireless devices. Therefore 20% of 220,107,525 calls, or 44,034,105 calls are generated via wireline or interconnected VoIP [220,107,525 x 20% = 44,034,105]. Divide 44,034,105 calls by a total of 2,256 wireline and interconnected VoIP providers, each provider passes an average of approximately 19,504 call per year [44,034,105/2256 = 19,503.6, rounded up to 19,504]. Multiply 19,504 by 1.45 providers, the transport service providers in each state or territory may see an increase of 28,281 calls [19,504 x 1.45 = 28,280.8, rounded up to 28,281].

sufficient to handle the increase in calls.[206] The annual wage, including benefits of a telecommunication technician would be $44 per hour, as above, multiplied by 2080 hours, for a total of $91,520 for each state. Given an estimated average of 55.53% gross margin for the communications service industry,[207] the annual cost to providers would be $205,802 for each state.[208] Multiplying the annual cost per state by 56 states and territories, we estimate a total annual recurring cost of $11,524,912, which we round to $11.6 million per year. We note that small providers could trim costs by leveraging transport procurement through small provider consortia or entering into interconnectivity agreements with larger providers.[209] We also note that these annual costs will fall over time due to ongoing modernization of legacy 911 systems. We seek comment on all of these estimates.

56. The record in this proceeding does not currently contain detailed information on the costs required for the implementation of wireline, interconnected VoIP, and Internet-based TRS IP-based 911 service delivery. Therefore, at this time, the Commission is not in a position to determine whether implementation of IP-based service delivery would result in significant costs for small wireline, interconnected VoIP, and Internet-based TRS providers, NG911 services providers, or state and local 911 authorities, or require small entities to hire professionals to comply, if our proposals are adopted. To help the Commission more fully evaluate the cost of compliance, we seek additional detailed information on the various cost issues implicated by our proposed rules. In the *Notice*, we specifically request information on the costs of compliance for wireline, interconnected VoIP, and Internet-based TRS providers to implement the required hardware, software, services, or transport, or other significant costs to telecommunications carriers or to state and local 911 authorities. We also request information on planned or expended costs from providers that have already transitioned to providing 911 traffic to the ESInet via IP or via legacy network gateway. Further, we ask whether costs to connect to NG911 are significantly different for different types of providers.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

57. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[210]

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[206] Assuming that, on an annual basis, a full-time, full-year technician works 2,080 hours to handle the additional 28,281 calls, each technician would have to support only 14 calls per hour on average [28,281/2,080 = 13.6, rounded up to 14]. We believe that our assumption of hiring a technician per state to handle these additional 911 calls is an overestimate given that converting and transporting these calls are largely automated with little need of personnel involvement once the providers' calls are routed to the transport service providers' site.

[207] According to Dr. Aswath Damodarn at NYU Stern School of Business, the gross margin for the telecommunication services sector is 55.53%. *See* New York University, *Margins by Sector* (*US*), https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html (last visited May 16, 2023).

[208] We assume that these wireline service providers need to hire a third-party to provide this transport service, and we further assume that these third-party transport service providers mark up their service, so the gross profit margin is 55.53% according to the estimated industry average. If the cost is $91,520, the after mark-up price of transport service would be $205,802 [=$91,520/(1 – 55.53%) = 205,802]. In other words, if a third-party transport provider charges $205,802 to provide the additional services, it retains $114,282 [=$205,802*55.53%] as its gross profit after paying $91,520 in wages and benefits to the additional technician it has to hire.

[209] NASNA Reply at 3-4.

[210] *See* 5 U.S.C. § 603(c)(1)-(4).

58. *Delivery in IP-Based Format*. We believe our proposal to require wireline, interconnected VoIP, and Internet-based TRS providers to complete all translation and routing to deliver 911 calls, including associated location information, in the requested IP-based format to an ESInet or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have certified the capability to accept IP-based 911 communications would help to advance NG911 and benefit small entities in several ways. Specifically our proposal would, (1) help address operational and routing issues for small and other jurisdictions that have implemented NG911; (2) help alleviate the burden on small state and local 911 authorities of maintaining transitional gateways and other network elements to process and convert legacy calls;[211] and (3) help small and other jurisdictions realize additional public safety benefits available on NG911 networks. In assessing NG911 requirements, we considered whether there any other providers that we should require to deliver IP-based 911 services. In the *Notice*, we seek comment on these matters.

59. *Delivery Points and Cost Allocation for IP-Based 911 Calls*. We propose to require wireline, interconnected VoIP, CMRS, and Internet-based TRS providers to transmit all 911 calls to destination point(s) in those networks designated by a 911 authority. In addition, we propose that in the absence of agreements by states or localities on alternative cost recovery mechanisms, wireline, interconnected VoIP, CMRS, and Internet-based TRS providers must cover the costs of transmitting 911 calls to the point(s) designated by a 911 authority, including any costs associated with completing the translation and routing necessary to deliver such calls and associated location information to the designated destination point(s) in the requested IP-based format. Under this proposal, states and localities would remain free to establish alternative cost allocation arrangements with providers. As a *default* mechanism, this proposal would allocate costs only when the parties are unable to agree on cost recovery measures. The proposal also provides flexibility to small entities to negotiate for state-level cost recovery when and if needed, which could minimize the economic impact for small entities.

60. Commenters representing rural and other telecommunications carriers generally oppose the establishment of a point for delivery of 911 traffic, arguing that it is unnecessary or would slow the rollout of NG911.[212] These commenters maintain that any demarcation point should be within service providers' local service areas.[213] NTCA cautions that to do otherwise would place a significant cost burden on rural customers and place universal service at risk.[214] As part of our consideration of these comments, we seek estimates from rural providers (usually small entities) and 911 authorities on specific costs for rural providers to comply with our proposed rules.

61. We also reviewed and considered an alternate proposal from the Texas 9-1-1 Entities which could impact small entities.[215] In our consideration of this proposal, we inquire and seek comment on whether we should adopt all or any parts of the Texas 9-1-1 Entities proposal; whether it would be beneficial to treat "IP-based providers" differently than "non-IP-based providers"; whether there are "threshold legacy issues" would we need to determine before adopting the Texas 9-1-1 Entities proposal

[211] Pennsylvania Emergency Mgmt. Agency Comments at 4-5 ("[Pennsylvania Emergency Mgmt. Agency] is currently experiencing difficulties in this process that may impact Pennsylvania's transition to NG911 service and extend the period of time 911 authorities are paying for both legacy and NG911 services at the same time.").

[212] CTIA – The Wireless Association (CTIA) Comments at 5 (rec. Jan 19, 2022); NTCA Reply at 4-5 (rec. Feb. 4, 2022) (NTCA Reply); South Carolina Telephone Coalition Comments at 2 (rec. Jan. 19, 2022); Minnesota Telecom Alliance Comments at 3-4 (rec. Jan. 19, 2022); USTelecom – The Broadband Association (USTelecom) Comments at 3-4 (rec. Jan 19, 2022).

[213] South Carolina Telephone Coalition Comments at 2; NTCA Comments at 6; Nebraska Rural Incumbent Local Exchange Carriers (Nebraska RLECs) Reply at 3 (rec. Feb. 3, 2022).

[214] NTCA Reply at 3.

[215] Texas 9-1-1 Alliance, the Texas Commission on State Emergency Communications, and the Municipal Emergency Communication Districts Association (Texas 9-1-1 Entities) Comments at 7-9 (rec. Jan 19, 2022).

either in full or in part, and whether there any other factors we should consider in connection with the proposal.

62. *Universal Service Impact.* Small entities could potentially incur an economic impact if requiring the delivery of IP 911 traffic to specific points were to increase universal costs. However, given that under our proposal there are measures available for small carriers to lower their costs such as participation in "collaborative consortiums of smaller carriers to leverage transport procurement, interconnectivity agreements with larger carriers, and the carriers' transition to IP,"[216] and states would remain free to implement cost recovery mechanisms as they deem necessary, we do not believe that our proposed rules would adversely impact universal service. To gain a better understanding of the implications for small entities, in the *Notice* we seek comment on the feasibility of these measures and their capability to defray costs for small carriers. In addition, we seek comment on the impacts of our proposed rules on the availability of universal service and universal service support under section 254 of the Act.

63. *Compliance Timelines*. We provide flexibility in the proposed compliance timelines for implementation of the requirements which should reduce the economic burden for small entities. For the requirements we propose to help ensure that jurisdictions transitioning to NG911 networks can access IP connections from wireline, interconnected VoIP, and Internet-based TRS providers, we propose to allow local and state entities to enter into agreements with wireline, interconnected VoIP, and Internet-based TRS providers that establish an alternate time frame for meeting those requirements. The flexibility to negotiate an alternative time frame which meets providers' business and financial needs is a significant step by the Commission that could minimize the economic impact for small entities.

64. Further, we provide a longer time frame for Internet-based TRS providers which are primarily small entities, to complete all translation and routing to deliver 911 calls, including associated location information, in the requested IP-based format to an Emergency Services IP network (ESInet) or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have certified the capability to accept IP-based 911 communications. The compliance obligation we propose for Internet-based TRS providers is twelve months from the effective date of the IP service delivery requirement, or twelve months after a valid request for IP-based service by a state or local 911 authority, whichever is later, rather than the six months applicable to wireline and interconnected VoIP providers.

65. *Costs of Implementation*. In the previous section, we discussed the absence of detailed information in the record on the costs for wireline, interconnected VoIP, and Internet-based TRS providers to implement the required software, hardware, and service upgrades necessary to comply with our proposed rules. Having data on the costs and economic impact of the proposals and other matters discussed in the *Notice* will allow the Commission to better evaluate options and alternatives to minimize the impact on small entities. Based on our request for specific and detailed cost implementation information, and for information on the extent that the Commission could limit the burden of any reporting requirements, we expect to more fully consider the economic impact on small entities following our review of comments filed in response to the *Notice*, and to this IRFA. The Commission's evaluation of this information will shape the final alternatives it 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

66. None.

[216] NASNA Reply at 3-4.

Appendix C

List of Parties Filing Comments and *Ex Partes*

Alachua County (FL) 911/Communications (Alachua County)

Alarm Industry Communications Committee (AICC)

Alliance for Telecommunications Industry Solutions (ATIS)

Arizona Department of Administration 9-1-1 Program Office (Arizona Dept. of Administration)

Association of Public-Safety Communications Officials-International, Inc. (APCO)

Boulder Regional Emergency Telephone Service Authority (BRETSA)

Colorado Public Utilities Commission (Colorado Public Utilities Comm.)

Comtech Telecommunications Corp. (Comtech)

CTIA

Fayette County (IA) 911 Service Board

Industry Council for Emergency Response Technologies (iCERT)

Iowa Department of Homeland Security and Emergency Management (Iowa Dept. of Homeland Security and Emergency Mgmt.)

Jones County (IA) 911 Coordinator

Minnesota Department of Public Safety's Emergency Communication Networks Division (Minnesota Dept. of Public Safety)

Minnesota Telecom Alliance

Mission Critical Partners, LLC (MCP)

National Association of State 911 Administrators (NASNA)

Nebraska Public Service Commission (Nebraska Public Service Comm.)

Nebraska Rural Incumbent Local Exchange Carriers (Nebraska RLECs)

NENA: The 9-1-1 Association (NENA)

NTCA – The Rural Broadband Association (NTCA)

Page County (IA) Emergency Management

Pennsylvania Emergency Management Agency (Pennsylvania Emergency Mgmt. Agency)

South Carolina Telephone Coalition

State of Vermont Enhanced 911 Board

Texas 9-1-1 Alliance, Texas Commission on State Emergency Communications, Municipal Emergency Communications Association (Texas 9-1-1 Entities)

USTelecom – The Broadband Association (USTelecom)

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking (June 8, 2023)

It was 55 years ago that state Senator Rankin Fite sat down in the mayor's office in Haleyville, Alabama and did something new. He used the telephone to dial 9-1-1. That call went straight to the local police station where it was answered with an uneventful "Hello." The start of 911 is a reminder that sometimes the biggest ideas come from the smallest places. Sometimes the most important technologies evolve with little acts and simple steps.

Today if you go to Haleyville—and I did, for the 50th anniversary of this event—you can take a look at the bright red telephone with a rotary dial used for that first 911 call.

Of course, a lot has changed about 911 over the last half century. But our Nation's emergency number remains powerful because we take steps to ensure the technology to support it stays up to date. Over time, we expanded this system from just wired calls to calls made from wireless phones and interconnected VoIP. We added texting to the mix, creating another valuable way to reach out in crisis. More recently, we explored how location-based routing could help ensure that every 911 wireless call goes to the right public safety answering point. We also proposed that those same wireless providers deliver calls, texts, and routing information in IP-format for next-generation 911 calls.

Today we continue this ongoing effort to update 911. Here we focus on making sure that this system, which was developed during the heyday of the analog phone and circuit-switched technology, can fully transition to IP-based next-generation 911. That means that in addition to the work we have already begun on wireless, we propose that wired, interconnected VoIP, and Internet-based TRS providers translate and route 911 calls in an IP-based format when a state or local 911 system can accept next-generation 911 calls.

This is a critical part of facilitating the transition of more than 6,000 public safety answering points nationwide to next-generation 911. We do this because what comes next with 911 technology is big. Next-generation 911 will provide better support for voice, text, data, and video communications. It means more redundancy to protect against outages. For those who call, it will mean the opportunity to provide real-time video of the emergency. It will mean the ability to provide first responders with instantaneous pictures. It will mean the ability to transmit a patient's medical records right to 911 dispatchers. And for those who take calls in an emergency, all of this data can expedite and inform public safety efforts and dramatically improve emergency response.

Like I said, this is critical. But another vital element is funding. Because first responders across the country need support for these changes to keep 911 up to date. So as I proposed last year, when Congress reauthorizes this agency's spectrum auction authority, it has a golden opportunity to direct revenues from our next set of auctions to a new, nationwide fund to support the transition to next-generation 911. Let's use public airwaves to support public safety. Let's build something bigger, bolder, and more comprehensive than what those behind that first call in Haleyville could ever imagine.

Thank you to the staff who worked on this rulemaking, including Debra Jordan, David Furth, Nicole McGinnis, Austin Randazzo, John Evanoff, Erika Olsen, Brenda Boykin, Rasoul Safavian, and Rachel Wehr from the Public Safety and Homeland Security Bureau; Jeremy Marcus, Victoria Randazzo, Ashley Tyson, Elizabeth Mumaw, Shannon Lipp, and Ryan McDonald from the Enforcement Bureau; Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities; Michelle

Ellison, Bill Richardson, Douglas Klein, and Keith McCrickard from the Office of General Counsel; Emily Talaga, Kenneth Lynch, Eugene Kiselev, Aleks Yankelevich, and Cher Li from the Office of Economics and Analytics; Elizabeth Drogula, Jodie May, Gil Strobel, Heather Hendrickson, Christi Shewman, and Albert Lewis from the Wireline Competition Bureau; and William David Wallace and Michael Scott from the Consumer and Governmental Affairs Bureau.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Facilitating Implementation of Next Generation 911 Services*, Notice of Proposed Rulemaking, 21-479

9-1-1 has a long and successful history. But even more compelling may be its future. Looking back, we've extended 9-1-1 to wireless, texting, satellite, and VoIP. We've made it easier, and quicker, for first responders to locate callers automatically, and for employees and hotel guests to secure help from a multi-line phone. We've improved the reliability and resilience of our networks and our situational awareness in the wake of an outage, and we've expanded the tools available to restore communications after a disaster.

As we look ahead, requiring providers to deliver calls and information in IP is a critical next step. Though as with anything, the details here matter. I look forward to hearing feedback on our proposal, and to finding the best way forward.

I thank the Public Safety and Homeland Security Bureau for its excellent work on this item.

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

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: June 8, 2023 **Released: June 9, 2023**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. The Telephone Consumer Protection Act (TCPA) restricts robocalls and robotexts, absent the prior express consent of the called party or a recognized exemption.[1] Over many years, the Commission has made clear that consumers have a right to decide which robocalls they wish to receive by exercising their ability to grant or revoke consent to receive such calls and texts. We initiate this proceeding to clarify and strengthen consumers' ability to revoke consent to receive both robocalls and robotexts.[2] Doing so will also clarify callers' obligations under the Commission's rules to honor such requests in a timely manner.

2. The TCPA does not define prior express consent or otherwise provide guidance relating to how consumers may provide or revoke consent to receive robocalls. As a result, the Commission has clarified various issues surrounding consent to receive robocalls. In some instances, these clarifications are not explicitly reflected in the Commission's rules. We propose to codify the Commission's past guidance on prior express consent to make these requirements more apparent to callers and consumers. In addition, we propose to amend our rules to strengthen the ability of consumers to decide which robocalls and robotexts they wish to receive by exercising their right to grant and revoke consent to individual callers.

II. BACKGROUND

3. The TCPA prohibits initiating "any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party" unless a statutory exception applies or the call is "exempted by rule or order by the Commission

[1] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA exempts from this prohibition calls made for emergency purposes. The Commission has also exercised its statutory authority to adopt certain exemptions from this prohibition. *See* 47 CFR § 64.1200(a)(3), (9).

[2] As discussed in more detail below, the Telephone Consumer Protection Act regulates any call made using an "automatic telephone dialing system" or an artificial or prerecorded voice. Any such call is considered a "robocall" or "robotext" for purposes of this proceeding. *See* 47 U.S.C. § 227(b)(1).

under [section 227(b)(2)(B)]."[3] The TCPA also prohibits, without the prior express consent of the called party, any call made using an 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 a statutory exception applies.[4]

4. *Consent to Calls from Wireless Carriers.* In 1992, the Commission concluded that wireless carriers need not obtain "additional consent" from their own subscribers prior to initiating autodialed or artificial or prerecorded voice calls to those subscribers because such calls are not charged to the called party.[5] In 2019, two petitioners sought a ruling that wireless subscribers can stop robocalls and robotexts from their wireless service provider by making a request to revoke consent to their service provider.[6] These petitions are still pending before the Commission.

5. *Opt-out Confirmation Texts.* In 2012, the Commission ruled that sending a one-time text message confirming a consumer's request that no further text messages be sent from that sender does not violate the TCPA if the confirmation text complies with certain specific limitations, including that it not contain any marketing.[7] In 2019, Capital One filed a petition requesting a declaratory ruling that, if a sender receives an opt-out request from a text message recipient and the sender's informational message was part of a program of several categories of informational messages in which the recipient had previously enrolled, then, pursuant to the Commission's ruling in *Soundbite*, the sender may seek clarification in an opt-out confirmation message to the recipient regarding the scope of the recipient's opt-out request without violating the TCPA.[8] Capital One notes that it sends customers a variety of different

[3] 47 U.S.C. § 227(b)(1)(B). In the case of robocalls that introduce an advertisement or contain telemarketing, the Commission's rules require that the caller obtain the prior express *written* consent of the called party. *See* 47 CFR § 64.1200(a)(2), (3).

[4] *See* 47 U.S.C. § 227(b)(1)(A)(iii). The Commission has confirmed that a text message is a "call" subject to the TCPA. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (*2003 TCPA Order*); *see also Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a "call").

[5] *See Rules and Regulations Implementing the Telephone Consumer Protect Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8774, para. 45 (1992) (*1992 TCPA Order*).

[6] *See Lucas Cranor Petition for Declaratory Ruling Requesting Order Granting That Consumers have the Right to Revoke Consent Under the Telephone Consumer Protection Act*, CG Docket No. 02-278 (filed Dec. 17, 2019) (arguing that "consumers have the right to revoke consent from receiving unwanted marketing text messages from their wireless providers at any time by any reasonable means; and that wireless providers must honor these revocation requests immediately") (*Cranor Petition*); *Petition of Paul Armbruster for Declaratory Ruling Or Alternatively A Rulemaking Regarding A Consumer's Absolute Right to Revoke Consent to Receive Unwanted Text Messages From Common Carriers*, CG Docket No. 02-278 (filed July 9, 2019) (requesting confirmation that a cellular phone customer can revoke consent to receive any and all unwanted text messages from their cell service provider) (*Armbruster Petition*).

[7] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, *Soundbite Communications, Inc.*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd 15391, 15394, para. 7 (2012) (*Soundbite Declaratory Ruling* or *Soundbite*).

[8] *See Capital One Services, LLC, Petition for Declaratory Ruling,* CG Docket Nos. 18-152 and 02-278 (filed Nov. 1, 2019) (arguing that, "if the sender of a lawful informational text message transmitted through an automatic telephone dialing system ('ATDS') receives a valid opt-out request from the recipient in response to that message, and that informational message was part of a program in which the recipient had previously enrolled that transmits several categories of informational messages, then, pursuant to the Commission's ruling in *Soundbite*, the sender may clarify in an opt-out confirmation message to the recipient the scope of the recipient's opt-out request without violating the [TCPA] or related Commission rules") (*Capital One Petition*).

categories of informational text messages, including fraud alerts, payment response, low balance alerts, and overseas transaction alerts.[9] Capital One's petition is still pending.

6. *Revocation of Consent.* In 2015, the Commission clarified that consumers who have provided prior express consent to receive autodialed or prerecorded calls may revoke such consent through any reasonable means.[10] Citing prior Commission rulings and the "well-established common law right to revoke prior consent," the Commission concluded that the most reasonable interpretation of "prior express consent" in light of the TCPA's consumer protection goals is "to permit a right of revocation."[11] In so doing, the Commission indicated that "to allow callers to designate the exclusive means of revocation would, at least in some circumstances, materially impair that right."[12] The Commission noted, for example, that if a caller receives a consumer's valid oral consent for certain messages but requires the consumer to fax his or her revocation to the caller, perhaps with additional conditions, such conditions may materially diminish the consumer's ability to revoke consent, "especially if disclosure of such conditions is not clear and conspicuous, and not repeated to the consumer with each message."[13] As a result, the Commission concluded that a consumer "may revoke his or her consent in any reasonable manner that clearly expresses his or her desire not to receive further calls, and that the consumer is not limited to using only a revocation method that the caller has established as one that it will accept."[14]

7. In 2016, Mobile Media Technologies (Mobile Media) filed a petition asking the Commission to clarify that the TCPA does not require a party transmitting a text message to create or make available to consumers a specific or particular method (such as bilateral text messaging, in which the consumer may revoke consent by replying "STOP") by which a consumer may revoke prior express consent to be texted.[15] The Commission has not yet acted on this petition.

III. DISCUSSION

8. We initiate this proceeding to clarify and strengthen consumers' rights under the TCPA to grant and revoke consent to receive robocalls and robotexts. Specifically, we propose to: 1) ensure that revocation of consent does not require the use of specific words or burdensome methods; 2) require that callers honor do-not-call and consent revocation requests within a reasonable time, not to exceed 24 hours of receipt; 3) codify our previous decision that consumers only need to revoke consent once to stop getting all robocalls and robotexts from a specific entity; and 4) allow wireless consumers the option to stop robocalls and robotexts from their own wireless service provider. As discussed below, we seek

[9] *Id*. at 4.

[10] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Report and Order, 30 FCC Rcd 7961, 7993-99, paras. 55-70 (2015) (*2015 TCPA Order*).

[11] *Id.* at 7994, 7997, paras. 57-58, 66 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petitions for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket No. 02-278, 05-338, Order, 29 FCC Rcd 13998 (2014) (*Anda Order*); Restatement (Second) of Torts § 892A, cmt. i. (1979) ("consent is terminated when the actor knows or has reason to know that the other is no longer willing for him to continue the particular conduct").

[12] *2015 TCPA Declaratory Ruling*, 30 FCC Rcd at 7997, para. 66.

[13] *Id*.

[14] *Id.* at 7998-99, para. 70.

[15] *See Petition of Mobile Media Technologies for Declaratory Ruling or, In the Alternative Retroactive Waiver,* CG Docket No. 02-278, WC Docket No. 07-135 (filed April 5, 2016).

comment on these proposals and on the costs and benefits of the proposals, including for smaller businesses and consumers.[16]

A. Revoking Consent in Any Reasonable Way

9. We propose to codify the Commission's 2015 ruling confirming that consumers who have provided prior express consent to receive autodialed or prerecorded voice calls may revoke such consent through any reasonable means.[17] We believe this will make clearer to callers and consumers that a consumer has a right to revoke consent under the TCPA. Specifically, we propose codifying a rule that would make clear that consumers may revoke prior express consent in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, including using words such as "stop," "revoke," "end," or "opt out," and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method. We seek comment on this proposal.

10. Additionally, we propose to codify that reasonable methods to revoke consent typically include revocation requests made by text message, voicemail, or email to any telephone number or email address at which the consumer can reasonably expect to reach the caller. We propose to codify that, when a consumer uses any such method to revoke consent, doing so creates a presumption that the consumer has revoked consent, absent evidence to the contrary. For example, the use of reply text messages is a reasonable and widely recognized means for text recipients to revoke prior consent to text messages. The sending of a "STOP" message in reply to an incoming text message is the standard recommended by industry groups such as the Mobile Marketing Association.[18] In addition, text messages may, on occasion, inadvertently be directed to reassigned or wrong numbers. In these instances, the text recipient may have no contact information other than the text itself, since the recipient is not the party that provided prior consent to the sender, and the only method they may have to contact the sender is with a reply text message.[19] Thus, we propose to codify that the sending of "STOP" or a similar message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way.[20] Should the text initiator choose to use a texting protocol that does not allow reply texts, we propose that it would bear the risk of potential liability under the TCPA unless it both provides a clear and conspicuous disclosure on each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol and clearly and conspicuously provides alternative ways for a consumer to revoke consent, such as a link or instructions to text a different number. We seek comment on these proposed rules.

11. We believe that these proposed rules are consistent with the Commission's prior finding that placing significant burdens on the called party who no longer wishes to receive such calls or texts is inconsistent with the TCPA[21] and with our finding that the TCPA requires "only that the called party

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[16] To the extent that the Commission has previously sought comment on any of these issues, we incorporate by reference any comments that have been filed in response to such requests. Given the passage of time, however, we encourage commenters to update and refresh their prior comments as necessary.

[17] *See 2015 TCPA Order*, 30 FCC Rcd at 7993-99, paras. 55-70 (noting that, "because the TCPA does not speak directly to the issue of revocation, the Commission can provide a reasonable construction of its terms").

[18] *See* Mobile Marketing Association Best Practices at section 1.5-2; Biggerstaff Comments at 1-2.

[19] *See, e.g.*, Biggerstaff Mobile Media Comments at 3-4.

[20] We note that, in response to the *Mobile Media Petition*, one commenter argued that the sending of a "STOP" message in reply to an incoming text is "the epitome of a 'reasonable method' of communicating to a sender to stop such messages and of revoking consent for future messages." *See* Biggerstaff Mobile Media Comments at 1-3 (arguing that granting Mobile Media's request would encourage text initiators to have unreliable response mechanisms for opt-out requests so that they can claim such requests were never received).

[21] *See 2015 TCPA Order*, 30 FCC Rcd at 7997, para. 67.

clearly express his or her desire not to receive further calls" to invoke this right to revoke consent.[22] We seek comment on whether callers have encountered any difficulties in complying with this longstanding precedent that consumers can revoke consent via any reasonable method. Based on this experience, are there specific issues or circumstances that have arisen that we should address in the context of this proceeding to provide clarity as to the factors that make the means of revocation "reasonable" both from a consumer's perspective and that of a caller? Have we struck an appropriate balance here between protecting the consumer's privacy interests and facilitating the caller's ability to process opt-out requests?

12. We also recognize that the scope of a "reasonable" means to revoke consent is not unlimited. We seek comment on any such limitations we should codify. What are the most common situations in which callers are unable to process opt-out requests from consumers? Are there ways that the Commission could address these situations in this proceeding consistent with our goal not to place an unreasonable burden on consumers to opt out of robocalls? We propose to codify that callers that do not believe that consumers have used a reasonable method to convey a request to revoke consent will be afforded an opportunity to rebut the presumption on a case-by-case basis, should a complaint be filed with the Commission or finder of fact. We seek comment on the types of evidence that would suffice to rebut the presumption. For example, if the consumer directs the request to a telephone number or email address, and the caller presents evidence that the consumer lacks a reasonable basis to expect that the request will be received by it, should we hold that such a method to revoke consent is not in fact reasonable? We believe such a rule would balance the consumer's right to revoke consent in an easy and reasonable manner with the caller's ability to process such revocation requests. We seek comment on this proposal, including any impact on small entities.

B. Timeframe for Honoring a Do-Not-Call or Revocation Request

13. We propose to require that, within 24 hours of receipt, callers must honor company-specific do-not-call and revocation-of-consent requests for robocalls and robotexts that are subject to the TCPA. The Commission's rules currently provide no specific timeframes for honoring revocation-of-consent requests for robocalls and robotexts made to residential or wireless telephone numbers. The Commission's rules currently require callers making telemarketing calls or exempted artificial and prerecorded voice calls to residential telephone numbers and exempted package delivery calls and texts to wireless consumers to honor do-not-call requests within a reasonable time not to exceed 30 days from the date of any such request.[23] This proposal will require amending those existing rules[24] and establishing new rules where no specific timeframe for honoring such requests currently exists.[25] We seek comment on this proposal, including on the 24-hour period. Is this period reasonable? Should we, rather, require that revocations be honored immediately upon receipt or consider some other timeframe?

14. Consumers are understandably frustrated when they receive robocalls and robotext messages days or even weeks following a request to stop such communications. Such delays also undermine a consumer's right to determine which robocalls and robotexts they wish to receive under the privacy protections afforded by the TCPA. In addition, we believe that advances in technology over the years, including automated and interactive technologies, have made the processing of do-not-call and consent revocation requests more efficient and timely than in the past.[26] We believe that such

[22] *Id*.

[23] *See* 47 CFR § 64.1200(a)(9)(i), (d)(3).

[24] *Id.*

[25] *See* 47 CFR § 64.1200(a)(1)-(3).

[26] As discussed in more detail below, the Commission has in most instances conditioned the use of an exemption on honoring opt-out requests "immediately." Although this condition has been imposed for many years, there is no indication that compliance in that timeframe has not been possible using current technology.

technological advances provide callers and senders of text messages with the tools they need to process all do-not-call and consent revocation requests in near real time. We seek comment on these beliefs.

15. Consistent with the conditions imposed on other calls to wireless telephone numbers that are exempt from the prior -express-consent requirement, we also propose to amend our rules for exempted package delivery calls to require that such callers honor an opt-out request immediately.[27] This proposal will place such callers on an equal footing with other categories of callers that have been granted an exemption to call wireless telephone numbers without prior express consent.[28] Alternatively, is there any reason that package delivery calls should continue to be treated differently from other exempted callers to allow for up to 30 days to honor an opt-out request? We believe these proposals will provide consumers with certainty that their do-not-call and consent revocation requests are honored in a timely manner, enhancing the ability of consumers to stop unwanted robocalls and robotexts. We seek comment on these proposals, including any burdens this may impose on callers, including small entities.

C. Revocation Confirmation Text Message

16. We propose to codify the Commission's *Soundbite Declaratory Ruling* clarifying that a one-time text message confirming a consumer's request that no further text messages be sent does not violate the TCPA or the Commission's rules as long as the confirmation text merely confirms the called party's opt-out request and does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request.[29] In the *Soundbite Declaratory Ruling*, the Commission noted that "confirmation messages ultimately benefit and protect consumers by helping to ensure, via such confirmation, that the consumer who ostensibly opted out in fact no longer wishes to receive text messages from entities from whom the consumer previously expressed an affirmative desire to receive such messages."[30] We believe that codifying this ruling will better ensure that both text senders and recipients are aware of it, including the limitations imposed on such one-time confirmation text messages. We seek comment on our proposal. In the time since it went into effect, have callers or consumers encountered any issues not addressed in the *Soundbite Declaratory Ruling*?

17. We also propose to codify that senders can include a request for clarification in the one-time confirmation text, provided the sender ceases all further robocalls and robotexts absent an affirmative response from the consumer that they wish to receive further communications from the sender. We further propose that a lack of any response to the confirmation call or text must be treated by the sender as a revocation of consent for all robocalls and robotexts from the sender. We do so in response to Capital One's petition seeking confirmation that the text sender may request clarification in its one-time confirmation message of the scope of the recipient's revocation request when that recipient has consented to receiving multiple categories of informational messages from the sender.[31] We note that banks and financial institutions support Capital One's request, indicating that consumers often consent to receive multiple categories of informational messages and that opt-out requests in these situations can be ambiguous as to whether the request applies to all or just certain types of those messages.[32] Consumer

[27] *See* 47 CFR § 64.1200(a)(9)(i). As noted, the Commission has conditioned all other categories of exempted calls to wireless telephone numbers on honoring opt-out requests "immediately." *See* 47 CFR § 64.1200(a)(9)(ii)-(iv).

[28] *See* 47 CFR § 64.1200(a)(9)(ii)-(iv).

[29] *See Soundbite Declaratory Ruling*, 27 FCC Rcd at 15394-98, paras. 7-12 (noting that the sending of such confirmation text messages is a widespread practice that often benefits consumers).

[30] *Id*. at 15396, para. 10.

[31] As an example, Capital One notes that, if it were to send a text message about a declined card transaction to which the recipient responded with "stop," it would be unclear whether the customer is requesting to opt out of all messages including payment due notices and suspected fraud alerts, or only card decline notices. *See Capital One Petition* at 3.

[32] *See, e.g.*, ACA Comments at 1-2; National Association of Federally-Insured Credit Unions at 1-2.

groups have also expressed support for Capital One's request, provided that a lack of any response to the confirmation text message must be interpreted by the sender to mean that the consumer's revocation request was intended to encompass all robocalls and robotexts and the sender must therefore cease all further robocalls and robotexts to that consumer absent further clarification from the consumer.[33] We seek further comment on any additional issues not fully addressed in the record.

18. Consistent with the *Soundbite Declaratory Ruling* and Capital One's request, we propose to codify that any such clarification message must not contain any marketing or advertising content or seek to persuade the recipient to reconsider their opt-out decision.[34] Rather, this proposed clarification is strictly limited to informing the recipient of the scope of the opt-out request absent some further confirmation from the consumer that they wish to continue receiving certain categories of text messages from the sender. We seek comment on this limitation.

19. We propose to emphasize that this confirmation text message is limited to a final *one-time* text message absent an affirmative response from the consumer that they wish to continue to receive certain categories of informational calls or text messages from the sender. We propose that, in the absence of any such affirmative response, no further robocalls or robotexts can be made to this consumer. In addition, we propose that a "STOP" text sent in response to the one-time request for confirmation does not then allow the text sender to send another request for further clarification. As noted above, both industry and consumer groups support this proposal.[35] Does the record fully address the views of all parties?

20. We seek comment on these proposals and any other related issues, such as any impact on smaller entities. Is this the appropriate limit to put on the clarification from the *Soundbite Declaratory Ruling*? Are there other limitations the Commission should impose to protect consumers' rights to opt out of text messages yet ensure callers' ability to correctly interpret consumers' intent in revoking consent? Should we instead decline to offer the clarification Capital One seeks?

D. Wireless Carrier Calls to Subscribers

21. We propose to require wireless providers to honor their customers' requests to cease autodialed, prerecorded voice, and artificial voice calls, and autodialed texts. To effectuate this change, we propose to alter our prior ruling to require wireless providers to subject such calls to certain conditions that protect the privacy interests of subscribers.[36]

22. In 1992, the Commission concluded that wireless carriers need not obtain consent prior to initiating autodialed, artificial voice, or prerecorded voice calls to their own subscribers because such communications were not charged to the called party.[37] Following this ruling, Congress amended the TCPA to grant the Commission express statutory authority to exempt from the prior-express-consent

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[33] *See* Consumer Reports Comments at 2; NCLC et al. Comments at 2.

[34] *Soundbite Declaratory Ruling*, 27 FCC Rcd at 15397, paras. 11-12; *Capital One Petition* at 2.

[35] *See*, *e.g.*, ACA Comments at 1-2 (consumers can suffer harm if they inadvertently opt-out of legitimate business communications they may need); Consumer Reports Comments at 1 (agreeing that a follow-up message can be helpful for the consumer, who may not have intended to opt out of all categories of informational messages); National Association of Federally-Insured Credit Unions at 1-2 (such messages are not only common practice across industries, but they also offer a much-needed clarification for consumers who inadvertently submit an opt-out request or who want to opt out of specific messages but want to continue to receive other important, time-sensitive information); NCLC et al. Comments at 2.

[36] As discussed in further detail below, we propose to create an exemption for wireless providers pursuant to our authority under section 227(b)(2)(C). *See* 47 U.S.C. § 227(b)(2)(C). We note that any such exemption would strictly be limited to wireless providers that call or text their own subscribers and not extend to communicating with the subscribers of other wireless providers.

[37] *See 1992 TCPA Order*, 7 FCC Rcd at 8774, para. 45.

requirement calls to wireless numbers that are not charged to the called party *subject to* such conditions as the Commission deems necessary to protect the privacy rights afforded under the TCPA.[38] As a result, the ability of wireless carriers to call their own subscribers without prior express consent, where the consumer is not charged for the call, was based on the language of section 227(b)(1)(A)(iii) and was not a creation of a section 227(b)(2)(C) exemption; therefore, the Commission has not subjected this ability to conditions to protect the privacy rights of wireless subscribers that the Commission has imposed in other analogous situations where callers have been granted an exemption to make robocalls or send robotexts to wireless numbers without prior express consent.

23. This situation has created disagreements as to whether the Commission has authority to impose an opt-out requirement on communications from wireless service providers to their customers. Two wireless subscribers filed petitions seeking clarification that they can revoke consent to receive calls and messages from their wireless provider after such a request to stop such communications was denied by their wireless providers.[39] In response to requests for comments on these petitions, wireless providers and organizations opposed the relief sought, arguing that the TCPA's prohibitions do not apply to communications from wireless providers to their customers because there is no charge to the subscribers for calls and messages to them.[40] As a result, these commenters contend, there is no prior consent to be revoked because prior express consent is not required to make such calls under the TCPA. We seek comment on these considerations in the context of our proposed exemption.

24. We propose to revisit the 1992 ruling that "cellular carriers need not obtain additional consent from their cellular subscribers prior to initiating autodialer and artificial and prerecorded message calls for which the cellular subscriber is not charged."[41] Instead of that blanket exemption for all wireless calls for which the subscriber is not charged, we propose to create and codify a qualified exemption—based on our authority under section 227(b)(2)(C)—for informational robocalls and robotexts from wireless providers to their subscribers. More specifically, those calls would be exempt from the prior-express-consent requirement if, and only if, certain conditions are satisfied.[42] As noted, the Commission has exercised this statutory authority to recognize certain limited exemptions in other analogous situations where such calls also are made without a charge to the called party.[43] We note that section 227(b)(2)(C)'s authority to grant exemptions from the prior-express-consent requirement is predicated on the ability of callers to make such calls with no charge to the consumer.[44] We believe that requirement would be meaningless if all such calls or texts were deemed to be wholly outside the prior express consent requirement merely because they were free to the end user, as some wireless providers have argued.[45] Consistent with section 227(b)(2)(C), which permits the Commission to impose such conditions it deems necessary in the interest of privacy,[46] we propose conditions that are similar to those the Commission imposed to protect the privacy interests of consumers in other situations where it has recognized an

[38] *See* Telephone Disclosure and Dispute Resolution Act, Pub. L. No. 102-556, 106 Stat 4181 (1992); 47 U.S.C. § 227(b)(2)(C).

[39] *See, e.g.*, *Armbruster Petition*; *Cranor Petition*.

[40] *See, e.g.*, AT&T Armbruster Comments at 1-2; CTIA Armbruster Comments at 7-8.

[41] *See 1992 TCPA Order*, 7 FCC Rcd at 8774, para. 45.

[42] *See* 47 U.S.C. § 227(b)(2)(C).

[43] *See* 47 CFR § 64.1200(a)(9) (creating exemptions for package delivery, financial services, inmate phone service providers, and certain healthcare callers subject to specific conditions including the ability of consumers to opt out from such robocalls or robotexts).

[44] *See* 47 U.S.C. § 227(b)(2)(C).

[45] *See, e.g.*, AT&T Armbruster Comments at 1-2; CTIA Armbruster Comments at 7-8.

[46] *See* 47 U.S.C. § 227(b)(2)(C).

exemption from the prior-express-consent requirement for robocalls to wireless telephone numbers. The proposed conditions are as follows:

> (A) voice calls and text messages are initiated by a wireless service provider only to an existing subscriber of that wireless service provider at a number maintained by the wireless service provider;
>
> (B) voice calls and text messages must state the name and contact information of the wireless provider (for voice calls, these disclosures must be made at the beginning of the call);
>
> (C) voice calls and text messages must not include any telemarketing, solicitation, or advertising;
>
> (D) voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;
>
> (E) a wireless service provider may initiate a maximum of three voice calls or text messages during any 30-day period;
>
> (F) a wireless service provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying "STOP"; and,
>
> (G) a wireless service provider must honor opt-out requests immediately.

25. We believe such an exemption, subject to the conditions imposed above, balances the privacy interests of the TCPA with the legitimate interests of wireless providers in communicating with their own subscribers. And because the TCPA only restricts calls initiated with an autodialer or using an artificial or prerecorded voice to a wireless telephone number, wireless providers can use a live agent or equipment that does not constitute an autodialer to make such calls or send texts without running afoul of the TCPA.[47] In addition, we propose that wireless providers have the option to obtain the prior express consent of their subscribers to avoid the need to rely on this exemption and its accompanying conditions, including the numerical limits imposed on such exempted calls.[48] We seek comment on these conditions. Are further conditions needed for calls from a wireless service provider to its subscribers? Alternatively, we seek comment on any benefits consumers receive from calls or messages that may be lost as a consequence of an opt-out or limit on the number of calls or messages sent. Are there any potential drawbacks for consumers to the conditions we have proposed?[49] If so, should we modify our proposed conditions to account for any such drawbacks?

26. Lastly, we believe such an exemption satisfies the obligations of section 8 of the TRACED Act.[50] Specifically, the class of parties that may make such exempted calls in these situations is

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[47] *See* 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3).

[48] We note that the Commission has confirmed that callers can obtain prior express consent to make informational calls either orally or in writing. *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order on Reconsideration and Declaratory Ruling, FCC 22-100, 2022 WL 18023141, at 4, para. 12 (2022).

[49] *See, e.g.*, Letter from Sarah Leggin, Assistant Vice President, CTIA, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed June 2, 2023) (contending that the NPRM's proposals with respect to calls and texts from wireless providers to their customers "would limit the ability of [wireless] consumers to receive important, time-sensitive information about their wireless service").

[50] *See* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 8 (codified at 47 U.S.C. § 227(b)(2)(I)) (2019) (TRACED Act). As directed by the TRACED Act, (continued….)

strictly limited to the wireless service provider. The class of parties that may be called is limited to an existing subscriber of a wireless service provider, and the number of such calls and messages is limited to three calls within any 30-day period. To the extent that there are any calls or texts that wireless service providers are mandated to make to their subscribers pursuant to any federal or state law, we seek comment on whether such calls or texts should not be counted toward the numerical limit of such communications that are imposed in the 30-day timeframe.[51] We seek comment on this proposal, including any burdens this proposal may impose on wireless providers, including small entities.

E. Legal Authority

27. We tentatively conclude that our legal authority for the proposed rules contained herein derives from sections 154 and 227 of the Communications Act of 1934, as amended (the Act).[52] We further propose to rely on our authority under section 8 of the TRACED Act to establish limitations on the proposed exemption for wireless providers from the TCPA's prior-express-consent requirement. As discussed above, the Commission as the expert agency on the TCPA has addressed issues relating to prior express consent by robocall consumers on numerous occasions. We believe that these sources grant us sufficient authority to adopt the proposed rules contained herein, and we seek comment on this conclusion. Are there any other sources of legal authority we should rely on? Do any of these sources of authority not apply to the rules we propose?

F. Proposed Effective Date

28. We propose that the rule changes set forth herein go into effect upon publication of an Order in the Federal Register, or for those rules that require OMB review under the Paperwork Reduction Act, upon OMB approval and publication of the notice of approval in the Federal Register. We seek comment on whether this proposed timeline provides a sufficient opportunity for affected parties to comply with any new requirements imposed by the proposed rules or whether a longer implementation period is warranted. We also seek comment on whether these effective dates should be the same for all affected parties, or whether we should provide more time for small entities to comply.

IV. PROCEDURAL MATTERS

29. *Paperwork Reduction Act*. This Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.[53] If the Commission adopts any new or modified information collection requirements, they 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 are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[54] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[55]

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any exemption adopted pursuant to sections 227(b)(2)(B) or (C) must include requirements with respect to: (1) the classes of parties that may make such calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party.

[51] *See, e.g.*, AT&T Armbruster Comments at 12 (noting that, in certain circumstances, wireless providers may be legally required to communicate certain information to their subscribers).

[52] *See* 47 U.S.C. §§ 154(i), (j) and 227.

[53] Pub. L. 104-13.

[54] Pub. L. 107-198.

[55] 44 U.S.C. § 3506(c)(4).

30. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[56] 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."[57] Accordingly, we have 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 B. 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.

31. *Ex Parte Presentations—Permit-But-Disclose*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[58] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

32. *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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

    - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

[56] 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).

[57] 5 U.S.C. § 605(b).

[58] 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, D.C. 20554.

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

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

34. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these 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.

35. *Additional Information.* For additional information on this proceeding, contact Richard D. Smith, Richard.Smith@fcc.gov or (717) 338-2797, Consumer and Governmental Affairs Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

36. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 227, and section 8 of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, that this *Notice of Proposed Rulemaking* is hereby **ADOPTED**.

37. **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 *Notice of Proposed Rulemaking* on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

38. **IT IS FURTHER ORDERED** that the Commission's Office of Managing Director, Reference Information Center **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Draft Proposed Rules for Public Comment

The Federal Communications Commission proposes to amend part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

> Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L – Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Section 64.1200 is amended by revising paragraph (a)(9)(i)(F) and adding paragraphs (a)(9)(v), (10), and (11) and revising paragraph (d)(3) to read as follows:

§ 64.1200 Delivery Restrictions.

* * * * *

* * *

(9) * * *

(i)* * *

(F) The package delivery company must offer package recipients the ability to opt out of receiving future delivery notification calls and messages and must honor an opt-out request **immediately**; and,

* * * * *

(v) Calls made by a wireless service provider to an existing subscriber, provided that all of the following conditions are met:

> (A) voice calls and text messages are initiated by a wireless service provider only to an existing subscriber of that wireless service provider at a number maintained by the wireless service provider;
>
> (B) voice calls and text messages must state the name and contact information of the wireless provider (for voice calls, these disclosures must be made at the beginning of the call);
>
> (C) voice calls and text messages must not include any telemarketing, solicitation, or advertising;
>
> (D) voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;
>
> (E) a wireless service provider may initiate a maximum of three voice calls or text messages during any 30-day period;

(F) a wireless service provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying "STOP"; and,

(G) a wireless service provider must honor opt-out requests immediately.

* * * * *

(10) A called party may revoke prior express consent, including prior express written consent, to receive calls or text messages made pursuant to paragraphs (a)(1) through (3) of this section by using any reasonable method to clearly express a desire not to receive further calls or text messages from the caller or sender. The use of text message, voicemail, or email to any telephone number or email address at which the consumer can reasonably expect to reach the caller to revoke consent creates a rebuttable presumption that the consumer has revoked consent absent evidence to the contrary. The sending of "STOP" or a similar text message that reasonably conveys a desire to not receive further messages in reply to an incoming text message creates a presumption that the consumer has revoked consent in a reasonable way. Callers or senders of text messages covered by paragraphs (a)(1) through (3) of this section may not designate an exclusive means to request revocation of consent. Should the text initiator choose to use a texting protocol that does not allow reply texts, it must provide a clear and conspicuous disclosure on each text to the consumer that two-way texting is not available due to technical limitations of the texting protocol, and clearly and conspicuously provide reasonable alternative ways to revoke consent. All requests to revoke prior express consent or prior express written consent made in any reasonable manner must be honored in a reasonable time not to exceed 24 hours from receipt of such request.

(11) A one-time text message confirming a request to revoke consent from receiving any further text messages does not violate paragraphs (a)(1) through (2) of this section as long as the confirmation text merely confirms the text recipient's revocation request and does not include any marketing or promotional information, and is the only additional message sent to the called party after receipt of the revocation request. To the extent that the text recipient has consented to several categories of text messages from the text sender, the confirmation message may request clarification as to whether the revocation request was meant to encompass all such messages; the sender must cease all further texts absent further clarification that the recipient wishes to continue to receive certain text messages.

* * * * *

(d) * * *

(3) *Recording, disclosure of do-not-call requests*. If a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under § 64.1200(a)(3)(ii) through (v) or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the 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. Persons or entities making such calls (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed **24 hours** from the **receipt** of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the call is made, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. A person or entity making an artificial or prerecorded-voice telephone call pursuant to

an exemption under § 64.1200(a)(3)(ii) through (v) or any call for telemarketing purposes 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.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

B. Need for, and Objectives of, the Proposed Rules

2. The NPRM seeks comment on proposals to clarify and strengthen the right of consumers to grant or revoke consent to receive robocalls and robotexts under the TCPA.[4] Under the Telephone Consumer Protection Act of 1991 (TCPA), certain types of calls and texts may only be sent with the prior express consent of the called party.[5] The ability of consumers to exercise this right to provide or revoke consent is essential to protecting the privacy rights of consumers by allowing them to decide which callers may communicate with them via robocalls and robotexts.

3. The NPRM proposes to codify prior Commission rulings and adopt new requirements to ensure that the requirements relating to providing or revoking consent under the TCPA are clear to both callers and consumers. Specifically, the *NPRM* proposes to make clear that consumers may revoke prior express consent in any reasonable manner that clearly expresses a desire not to receive further calls or text messages, including using words such as "stop," "revoke," "end," or "opt out," and that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method. The *NPRM* also proposes to require that callers honor do-not-call and revocation requests within a reasonable time not to exceed 24 hours of receipt. Further, the *NPRM* reiterates that consumers only need to revoke consent once to stop getting all calls and texts from a specific entity. It also proposes to codify that a one-time text message confirming a consumer's request that no further text messages be sent does not violate the TCPA or the Commission's rules as long as the confirmation text merely confirms the called party's opt-out request, does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request.[6] Finally, the *NPRM* proposes to require wireless providers to honor a customer's request to cease autodialed, prerecorded voice, and artificial voice calls, and automated texts..

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[1] 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.*

[4] NPRM at paras. 9-26; *see also* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act); TRACED Act § 8; Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227) (TCPA).

[5] *See* 47 U.S.C. § 227(b).

[6] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Soundbite Communications, Inc.*, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd at 15394-98, paras. 7-12.

C. Legal Basis

4. The proposed rules are authorized under sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227, and section 8 of the TRACED Act.

D. 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 adopted herein.[7] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[8] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[9] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[10]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[11] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[12] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[13]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[14] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[15] Nationwide, for tax year 2020, there

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[7] 5 U.S.C. § 603(b)(3).

[8] *Id*. § 601(6).

[9] *Id*. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[10] 15 U.S.C. § 632.

[11] 5 U.S.C. § 601(3)-(6).

[12] *See* SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf. (Nov 2021).

[13] *Id*.

[14] 5 U.S.C. § 601(4).

[15] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[16]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[17] U.S. Census Bureau data from the 2017 Census of Governments[18] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[19] Of this number, there were 36,931 general purpose governments (county,[20] municipal, and town or township[21]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[22] with enrollment populations of less than 50,000.[23] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[24]

9. *Telemarketing Bureaus and Other Contact Centers.* This industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for

[16] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[17] *See* 5 U.S.C. § 601(5).

[18] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[19] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes Local Governments by Type and State_2017.

[20] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[21] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[22] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[23] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[24] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients products or services, (2) taking orders for clients, (3) soliciting contributions for a client, and (4) providing information or assistance regarding a client's products or services.[25] These establishments do not own the product or provide the services they are representing on behalf of clients.[26] The SBA small business size standard for this industry classifies firms having $16.5 million or less in annual receipts as small.[27] According to U.S. Census Bureau data for 2017, there were 2,250 firms in this industry that operated for the entire year.[28] Of this number 1,435 firms had revenue of less than $10 million.[29] Based on this information, the majority of firms in this industry can be considered small under the SBA small business size standard.

10. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[30] 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.[31] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[32] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[33] Of that number, 2,837 firms employed fewer than 250 employees.[34] 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.[35] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer

[25] *See* U.S. Census Bureau, *2017 NAICS Definition,"561422 Telemarketing Bureaus and Other Contact Centers,"* https://www.census.gov/naics/?input=561422&year=2017&details=561422.

[26] *Id.*

[27] 13 CFR § 121.201, NAICS Code 561422.

[28] *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 561422, https://data.census.gov/cedsci/table?y=2017&n=561422&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[29] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than $100,000, and $100,000 to $249,999, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[30] *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.

[31] *Id.*

[32] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[33] *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.

[34] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[35] 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.

employees.[36] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

11. In cases where consumers invoke their right to grant or revoke consent to small entity callers to receive robocalls and robotexts under the TCPA, these callers may need to implement new methods to record and track such requests to honor them within the specified timeframes. At this time however, the Commission is not in a position to determine whether, if adopted, our proposals and the matters upon which we seek comment will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the potential rule changes discussed herein. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate additional relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *NPRM*.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant alternatives, specifically small business alternatives, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[37]

13. The *NPRM* specifically seeks comment on any costs or burdens imposed on callers to implement any of the proposals set forth in the *NPRM* which could help the Commission identify burdens for small entities and other actions that can be taken to minimize impact on small entities. For example, the *NPRM* proposes and seeks comment on what constitutes a "reasonable" manner to revoke consent, noting that it is not without limitation. An alternative consideration is whether callers will have an opportunity to demonstrate that a consumer has not used a reasonable means to convey their revocation of consent request. Allowing this flexibility may reduce the burden on small entities' ability to respond to process revocation requests. The *NPRM* considers any compliance costs for small businesses if the proposed rules are adopted and seeks comment on ways to minimize any such burdens. The *NPRM* also proposes that callers must honor do-not-call and revocation requests within 24-hours, and seeks comment on whether other timeframes should be considered, including whether small entities may benefit from longer timeframes to implement these requests. Many of the requirements noted in the *NPRM* have been adopted by the Commission in rulings that date back many years. As a result, we anticipate that many callers have already made efforts to comply with these obligations and may have no new burdens.

14. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

G. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

15. None.

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[36] *Id.*

[37] 5 U.S.C. § 603(c)(1)-(4).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Notice of Proposed Rulemaking (June 8, 2023)

Consumers across the country want fewer junk robocalls and robotexts. I don't blame them. Because I'm a consumer myself. When my phone rings or buzzes with a call or text, I am just like everyone else and as Pavlov would predict, I instinctively reach for my device. But when that call or text is from someone I do not know reaching out to me with something I did not ask for and do not need, that instinct goes from interest to irritation in no time flat.

That is why at the Federal Communications Commission we are constantly looking for new ways to stop to illegal robocalls and robotexts. It is why today we are updating our policies under the Telephone Consumer Protection Act. This means we propose new rules that strengthen the ability of consumers to decide which robocalls and robotexts they receive. We want to make it clear that if you opt-out of this junk you shouldn't be forced to jump through hoops or say magic words. Then we want to make clear that those behind these calls and texts have 24 hours to honor your request.

This is progress. But the truth is we need new tools to curb these calls and texts. The Telephone Consumer Protection Act is more than three decades old. Stretching its language to capture millions of mobile devices that are always ringing and buzzing is not easy. But there are at least three ways additional authority from Congress could fix that.

First, the Supreme Court's recent decision in Facebook v. Duguid narrowed the definition of autodialer under the Telephone Consumer Protection Act. This decision makes it a harder for this agency to ensure the protections in this law cover the way so many scam artists now use technology to reach us with junk calls and texts.

Second, the agency needs clear authority to access Bank Secrecy Act information in order to help identify more quickly the financial records of our calling targets without giving those targets suspected of scams a heads up that we are coming for them.

Third, I believe it would be beneficial if the agency could try to collect the fines we impose against the bad actors responsible for robotexts and robocalls. Right now, our enforcement work ends when we issue a forfeiture order because we lack the authority to pursue collection in court without the Department of Justice. I'd like to change that.

For now, though, I want to thank the Robocall Response Team and staff responsible for our efforts today, including Alejandro Roark, Edyael Casaperalta, Mark Stone, Aaron Garza, Kristi Thornton, Karen Schroeder, and Richard Smith of the Consumer and Governmental Affairs Bureau; Kristi Thompson, Rakesh Patel, Daniel Stepanicich, Mary Romano, and Jane Van Benten of the Enforcement Bureau; Richard Mallen, Malena Barzilai, and Bill Richardson of the Office of General Counsel; Michelle Schaefer and Virginia Metallo of the Office of Economics and Analytics; and Joycelyn James of the Office of Communications Business Opportunities.

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

In the Matter of	)	
	)	
Access to Video Conferencing	)	CG Docket No. 23-161
	)	
Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010	)	CG Docket No. 10-213
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule	)	

REPORT AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND ORDER

Adopted: June 8, 2023 **Released: June 12, 2023**

Comments Due: [30 Days After Publication in the Federal Register]

Reply Comments Due: [60 Days After Publication in the Federal Register]

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. Prior to the outbreak of COVID-19 in early 2020, video conferencing represented an important but still nascent mode of communication. That is not the case today. As the world adapted to a historic pandemic and the associated quarantine measures, video conferencing took on a central and critical role in the day-to-day functioning of American society.[1] Further, this change in how we communicate has outlasted the pandemic quarantine measures—employers, schools, government agencies, doctors, other organizations, and the general public now rely on video conferencing as an essential communications tool. It is difficult to overstate how thoroughly video conferencing has become embedded in the fabric of post-pandemic society.[2]

2. Today, video conferencing is routinely used by millions of people for workplace conferences, classes, and conversations with family and friends. Yet, for many people with disabilities, making effective use of video conferencing continues to be a challenge. Reported problems include lack of—or inferior—captioning; ineffective display of sign language interpreters; inability of blind or low-vision users to find and use volume controls; and insufficient user control of accessibility tools. Further, there is no easy way to use telecommunications relay services (TRS) on video conferencing platforms.[3] Currently, for a video conference participant to use video relay service (VRS),[4] a communications

[1] *See, e.g.*, American Council of the Blind (ACB), Comments, CG Docket No. 10-213 and GN Docket No. 21-140, at 1 (filed June 21, 2022) (ACB 2022 IVCS Refresh Comments) (stating that, during the pandemic, "technology and communications services have played an increasingly integral role in all aspects of our lives. . . . [T]he ability to access and communicate using video services have become ubiquitous and essential in the United States").

[2] *See, e.g.*, Sorenson Communications, LLC (Sorenson), Reply Comments, CG Docket No. 10-213 and GN Docket No. 21-140, at 1 (filed July 18, 2022) (Sorenson 2022 IVCS Refresh Reply Comments) ("[F]ull access to healthcare must now include access to telehealth; full participation in work life and in our communities now means regular video meetings.").

[3] Section 225 of the Communications Act of 1934, as amended (the Act), requires the Federal Communications Commission (FCC or Commission) to ensure the availability, to individuals who are deaf, hard of hearing, deafblind, or have a speech disability, of TRS that are functionally equivalent to voice communication services used by persons without hearing and speech disabilities "to the extent possible and in the most efficient manner." 47 U.S.C. § 225(a)(3), (b)(1). These services are supported by the Interstate Telecommunications Relay Services Fund (TRS Fund), which is collected from providers of telecommunications service, interconnected Voice over Internet Protocol (VoIP) service, and non-interconnected VoIP service, and is administered by a Commission contractor. *See* 47 CFR § 64.604(c)(5).

[4] VRS is a form of TRS that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows a communications assistant to view and interpret the party's signed conversation back and forth with a voice caller. 47 CFR § 64.601(a)(51).

assistant (CA) must dial in separately with a voice-only connection—an unsatisfactory arrangement, even when a dial-in connection is available.[5]

3. In this item, we take several steps to ensure that video conferencing is accessible to all. In the *Report and Order*, we resolve a long-standing legal question that has caused uncertainty for industry and hindered the use of video conferencing by people with disabilities. Under section 716 of the Act, as amended by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),[6] "interoperable video conferencing service" (IVCS) and equipment used for IVCS must be accessible to and usable by people with disabilities, unless that requirement is not achievable.[7] The Act defines "interoperable video conferencing service" as "a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing."[8] Revisiting the Commission's previously stated views[9] in light of changed circumstances, we find no persuasive reason to modify or limit the scope of this statutory definition, which includes services provided on a variety of commonly used video conferencing platforms. We conclude that section 716's accessibility requirements and Part 14 of our rules[10] apply to all services and equipment included in the statutory definition of IVCS.

4. In the *Notice of Proposed Rulemaking,* we propose to amend our Part 14 rules to define more specifically some of the steps needed to make interoperable video conferencing service accessible to people with disabilities. In addition, we propose to amend our TRS rules to facilitate the use of VRS in video conferences, and we seek comment on whether analogous changes are needed with respect to other forms of TRS. Finally, we propose a rule amendment to clarify when multiple CAs may be assigned to TRS calls (whether video conferences or not) that involve users of different forms of TRS.

5. In the *Order*, we grant TRS providers a limited, conditional waiver of the VRS privacy screen rule,[11] which restricts VRS users' ability to turn off their video cameras when not actively participating in a video conference.[12]

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[5] *See* Recommendation of the Federal Communications Commission (FCC) Disability Advisory Committee (DAC) on Telecommunications Relay Service (TRS) Use on Video Conferencing Platforms, at 2-3 (Feb. 24, 2022), https://www.fcc.gov/file/22912/download (DAC Video Conferencing Report). This is beginning to change. *See* Sorenson, Integrated Sorenson Interpreting for Zoom, https://sorenson.com/solutions/video-relay-services/sorenson-for-zoom/ (last visited Apr. 24, 2023) (*Sorenson-for-Zoom*).

[6] Pub. L. No. 111-260, 124 Stat. 2751 (2010).

[7] 47 U.S.C. § 617(a)(1), (b)(1); *id*. § 153(1).

[8] *Id*. § 153(27).

[9] *See Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision,* CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14576, para. 47 (2011) (*2011 ACS Order* or *2011 ACS Further Notice*). As explained in more detail below, in the *2011 ACS Order* the Commission assumed that the word "interoperable" needed to be defined independently of the term "interoperable video conferencing service."

[10] *See* 47 CFR Pt. 14.

[11] *Id*. § 64.604(a)(6).

[12] *See* Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule for Piloting VRS Integration with Video Conferencing Services, CG Docket Nos. 03-123 and 10-51 (filed Dec. 19, 2022), https://www.fcc.gov/ecfs/document/12190888126091/1 (Sorenson Petition).

II. BACKGROUND

A. Growth of Video Conferencing

6. Since the March 2020 outbreak of the COVID-19 pandemic in the United States, video conferencing has grown from a niche product to a central pillar of our communications infrastructure.[13] In early 2020, after governments, businesses, and schools adopted social distancing requirements,[14] organizations, families, and individuals turned to video conferencing as a work-around.[15] Use of video conferencing increased exponentially,[16] becoming "a significant part of the technology solution replacing in-person meetings, conference calls, and traditional classroom instruction."[17]

7. The new social interaction paradigm occasioned by the pandemic appears to have permanently altered the norms of modern communication in the workplace, healthcare, education, social interaction, civic life, and more.[18] As the Consumer Technology Association (CTA) observes, the pandemic "amplified and accelerated the reality that much of Americans' lives take place online using an increasing variety of connected devices."[19] In CTA's 2021 member survey, for example, roughly 80% of respondents strongly agreed that their employees benefitted from a hybrid work environment.[20] In a 2022 study, the Pew Research Center found that 78% of remote workers use video or online conferencing

[13] *See, e.g.,* Rudly Raphael, *Zoom into the Future of Videoconferencing*, Greenbook.org (Nov. 6, 2022), https://www.greenbook.org/mr/executive-insights/zoom-into-the-future-of-video-conferencing/; Max Kalmykov, *The Web Conferencing Boom: Covid-19's Effect on the Video Call Market*, Dataart.com (July 16, 2020), https://www.dataart.com/blog/the-web-conferencing-boom-covid-19-s-effect-on-the-video-call-market; Roger Dooley, *How Zoom Conquered Video Conferencing*, Forbes (Sept. 30, 2020), https://www.forbes.com/sites/rogerdooley/2020/09/30/how-zoom-conquered-video-conferencing/?sh=1af02f25a977.

[14] *See, e.g.*, Hristina Byrnes & Grant Suneson, *Coronavirus Update: Here's Every State's Rules for Staying Open and Social Distancing*, FDL Reporter (Jul.26, 2020), https://www.fdlreporter.com/story/money/2020/07/26/coronavirus-everystates-rules-for-staying-open-and-social-distancing/112351868/ (providing a state-by-state breakdown of social distancing requirements, face covering mandates, and capacity limitations on businesses); Geoff Whitmore, *Update on New York Travel Ban*, Forbes.com (Aug. 12, 2020), https://www.forbes.com/sites/geoffwhitmore/2020/08/12/update-on-new-yorks-extensive-travelrestrictions/#64308ff530df (discussing quarantine requirements for domestic travelers to New York, New Jersey, and Connecticut); Elinor Aspegren, *Back to school? Despite CDC recommendations, most major schools going online as COVID-10 cases spike*, USA Today (July 23, 2020), https://www.usatoday.com/story/news/education/2020/07/23/covid-back-toschool-online-fall-semester-2020-reopening/5472142002/.

[15] Recommendation of the FCC Disability Advisory Committee Prepared by the Pandemic Communication Access Working Group, "Concerns and Lessons Learned regarding Communication Access for People with Disabilities During the Pandemic," at 4 (adopted Sept. 9, 2021) (DAC Pandemic Communications Access Report).

[16] *Id*. For example, between March 14-21, 2020, Google Play and Apple's iOS operating system recorded 62 million downloads of video conferencing apps, an all-time high. *See* Lexi Sydow, *Video Conferencing Apps Surge from Coronavirus Impact* (March 30, 2020), https://www.data.ai/en/insights/market-data/video-conferencing-apps-surge-coronavirus/. Additionally, use of web and video conferencing programs reportedly increased 500% in the first two months of the COVID-19 pandemic. *See* Mandi Sadler, Covid-19 Software Industry Statistics (April 9, 2020) https://www.trustradius.com/vendor-blog/covid-19-software-industry-data-and-statistics.

[17] DAC Pandemic Communications Access Report at 4.

[18] *See* Eric Griffith, *Hate Being on Live Calls? Sorry, They're Here to Stay* (Aug. 29, 2022), https://www.pcmag.com/news/hate-being-on-live-video-calls-sorry-theyre-here-to-stay.

[19] Consumer Technology Association (CTA), Comments, CG Docket No. 10-213 and GN Docket No. 21-140, at 3 (filed June 21, 2022) (CTA 2022 IVCS Refresh Comments).

[20] Consumer Technology Association Member Survey, *Future of Work: 2021* at 8 (Oct. 2021), https://shop.cta.tech/products/future-of-work-2021-cta-member-survey.

services at least "sometimes," with more than half using such services "often."[21] CTA also notes that "video conferencing has been a key component of the move to telehealth," which it calls a "great equalizer in a healthcare system where social and economic disparities continue to affect patient care."[22] To help students and teachers participate in the large-scale shift to remote learning, the Commission established the $7.171 billion Emergency Connectivity Fund Program, which helps schools and libraries purchase advanced telecommunications equipment and services.[23] For millions of Americans, video conferencing has become a mainstay of their business and personal lives.

B. Accessibility Concerns

8. With the growing use of video conferencing has come heightened concern about accessibility.[24] According to the Accessibility Advocacy and Research Organizations (AARO), a broad-based coalition of disability advocacy and research groups:

> Once the pandemic forced a shift to remote working, many of the 13% of American adults who have hearing difficulties found themselves cut off from colleagues during calls on Zoom, Microsoft Teams, and other virtual platforms. Faces on the screen are often too small for lipreading, and a lack of captions can make meaningful interaction impossible.[25]

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[21] Ruth Igielnik, *As telework continues for many U.S. workers, no sign of widespread 'Zoom fatigue'* (May 4, 2022), https://www.pewresearch.org/fact-tank/2022/05/04/as-telework-continues-for-many-u-s-workers-no-sign-of-widespread-zoom-fatigue/.

[22] In the mental health field, shortly after the COVID-19 outbreak, the American Psychological Association reported that 92% of its clinicians had pivoted to providing at least some remote services, either via the phone or on video conferencing services, and 76% provided services entirely by remote means. American Psychological Association, *Psychologists embrace telehealth to prevent the spread of COVID-19* (June 5, 2020), https://www.apaservices.org/practice/legal/technology/psychologists-embrace-telehealth. In 2022, 31% of clinicians continued to provide remote-only services while only 11% had returned to entirely in-person services. More than 95% of clinicians reported that they intended to continue providing telehealth services even after the pandemic. American Psychological Association, *Psychologists struggle to meet demand amid mental health crisis, 2022 COVID-19 Practitioner Impact Survey* (Nov. 2022), https://www.apa.org/pubs/reports/practitioner/2022-covid-psychologist-workload.

[23] *See* FCC Emergency Connectivity Fund, https://www.fcc.gov/emergency-connectivity-fund (last visited March 2, 2023).

[24] *See* AARO, Comments, GN Docket No. 21-140, at 4 (filed June 7, 2021) (AARO 2021 CVAA Refresh Comments); CTA 2022 IVCS Refresh Comments at 4; *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (Oct. 11, 2022), https://docs.fcc.gov/public/attachments/DA-22-1075A1.pdf (*2022 CVAA Report to Congress*).

[25] Telecommunications for the Deaf and Hard of Hearing, Inc., et al., Comments on Public Notice, CG Docket No. 10-213, at 8-9 (filed Apr. 4, 2022) (AARO 2022 CVAA Biennial Report Comments). According to the National Institutes of Health, 30 million people aged twelve years or older in the United States have hearing loss in both ears, and 20 million people have voice disorders. *See* National Institute on Deafness and Other Communication Disorders, Quick Statistics About Hearing (March 25, 2021), https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing; Sofia Anastasiadou and Yasir Al Khalili, *Hearing Loss* (July 21, 2022), https://www.ncbi.nlm.nih.gov/books/NBK542323/; Yasmin Naqvi and Vikas Gupta, *Functional voice disorders* (Oct. 24, 2022), https://www.ncbi.nlm.nih.gov/books/NBK563182/.

Small screens also make it difficult for users who are deaf or hard of hearing to identify visual clues, such as when a colleague is about to speak.[26] When automatic captions are provided on video conference platforms, the quality and timeliness of the transcription varies widely.[27] In a 2021 survey of 330 people with vision disabilities, approximately 57% of respondents found telehealth to be inaccessible in some way.[28] Further, users who are blind or have limited vision describe struggles to find and toggle volume controls.[29]

9. In recent years, various accessibility features have been introduced by a number of video conferencing providers. Depending on the platform, these features may include screen reader and braille display support, a choice of third-party live captioning or synchronous automatic captioning, multi-pinning features, and "spotlighting" a speaker so that all participants know who is speaking.[30] Some services also offer keyboard accessibility features, high-contrast visual elements, customizable notifications, verbosity controls, and other accessibility innovations.[31]

10. However, the accessibility of video conferencing services remains limited for many users. In its February 2022 recommendations to the Commission, the Disability Advisory Committee highlighted the inconsistent performance of video conferencing providers in making their platforms accessible to people who are deaf, hard of hearing, or deafblind. In recommending Commission action to facilitate TRS access on such platforms, the committee stated:

> [S]ome video conferencing platforms incorporate live closed captioning using automatic speech recognition (ASR). However, these solutions are not available for all platforms or on all video conferences for platforms that do provide them. . . . When ASR-based captions are available, they may be of insufficient quality. . . . Some platforms do not allow users to customize caption size, color, opacity, and other critical settings to ensure readability. And some platforms lack sufficient user control to ensure that interpreters and signers are properly displayed and can be properly pinned on users' displays.[32]

11. Commenters also point out that "users with disabilities often are not in a position to dictate what video conferencing service" the host of the conference should use.[33] For example, a patient who is deaf may not be able to obtain healthcare because the doctor's telehealth conferencing platform

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[26] *See* Mark Ray, *Why Remote Work Can Be Hard For Hard-Of-Hearing People*, Forbes (Mar. 29, 2022), https://www.forbes.com/sites/nextavenue/2021/09/02/why-remote-work-can-be-hard-for-hard-of-hearing-people/?sh=76a3d4c46d71.

[27] AARO 2022 CVAA Biennial Report Comments at 9-10.

[28] Rhoads, C.R., Bleach, K., Chatfield, S., & Camarillo, P.M., *The Journey Forward: Impact of COVID-19 on Blind, Low Vision, and Deafblind U.S. Adults* (2022), https://www.afb.org/research-and-initiatives/flatten-inaccessibility-survey/journey-forward.

[29] American Foundation for the Blind (AFB), Public Notice Comments, CG Docket No. 10-213, at 3 (filed Apr. 4, 2022) (AFB 2022 CVAA Biennial Report Comments).

[30] *2022 CVAA Report to Congress* at para. 22; *see also* CTA 2022 IVCS Refresh Comments at 7-8; CTIA, Comments, CG Docket No. 10-213 and GN Docket No. 21-140, at 2 (filed June 21, 2022) (CTIA 2022 IVCS Refresh Comments).

[31] *2022 CVAA Report to Congress* at para. 24.

[32] DAC Video Conferencing Report at 2-3.

[33] Accessibility Advocacy and Research Organizations, Reply Comments, CG Docket No. 10-213 and GN Docket No. 21-140, at 4 (filed July 18, 2022) (AARO 2022 IVCS Refresh Reply Comments at 4).

does not enable an effective connection to a sign language interpreter or VRS.[34] A student who is blind may be unable to fully participate in a remote class discussion if information provided through a "share screen" feature is not accessible to screen readers.[35] In these and other scenarios, a person with a disability often has no opportunity to request a different, accessible video conferencing system.

C. Application of the CVAA to Video Conferencing

12. Under the CVAA, enacted in 2010, providers of advanced communications services (ACS) and manufacturers of equipment used for ACS must make such services and equipment accessible to and usable by people with disabilities, unless these requirements are not achievable.[36] Service providers and manufacturers may comply with section 716 of the Act either by building accessibility features into their services and equipment[37] or by using third-party applications, peripheral devices, software, hardware, or customer premises equipment (CPE) that are available to individuals with disabilities at nominal cost.[38] If accessibility is not achievable through either of these means, then manufacturers and service providers must make their products and services compatible with existing peripheral devices or specialized CPE commonly used by people with disabilities to achieve access, subject to the achievability standard.[39]

13. The Act defines "advanced communications services" as:

> (A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; (D) interoperable video conferencing service; and (E) any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.[40]

"Interoperable video conferencing service," in turn, is defined as:

> A service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.[41]

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[34] *2022 CVAA Report to Congress* at para. 27.

[35] *See* Letter from Everette Bacon, National Federation for the Blind, to Marlene H. Dortch, FCC, CG Docket Nos. 10-213 and 05-231, MB Docket No. 12-108 (filed Aug. 19, 2022).

[36] 47 U.S.C. § 617(a)(1), (b)(1); 47 CFR § 14.10(b) (defining "achievable").

[37] 47 U.S.C. § 617(a)(2)(A), (b)(2)(A).

[38] *Id*. § 617(a)(2)(B), (b)(2)(B). By contrast, section 255 of the Act, which requires that providers of telecommunications service and manufacturers of telecommunications and customer premises equipment ensure that their services and equipment are accessible to and usable by people with disabilities, does not include a provision allowing service providers and equipment manufacturers to choose to meet their obligations by using third-party applications or equipment. *Id*. § 255.

[39] *Id*. § 617(c). ACS providers and equipment manufacturers are also subject to recordkeeping and reporting requirements established pursuant to section 717(a) of the Act. *Id*. § 618(a); *2011 ACS Order,* 26 FCC Rcd at 14650-55, paras. 219-30. For example, providers and manufacturers must maintain records of their efforts to ensure that their services and products are accessible (47 CFR § 14.31(a)), and must be prepared to demonstrate due diligence in exploring accessibility and achievability in response to complaints (*id*. § 14.36(a)).

[40] 47 U.S.C. § 153(1). Subparagraph (E) was added by the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (2022). The Commission is addressing this fifth subcategory in a separate proceeding. *See Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Dockets Nos. 23-62 and 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19 (Mar. 17, 2023).

[41] 47 U.S.C. § 153(27).

14. In adopting rules to implement section 716, the Commission incorporated without change the statutory definitions of ACS and the four then-existing types of ACS, including "interoperable video conferencing service."[42] However, in that 2011 rulemaking a question was raised as to what Congress meant by including the word "interoperable" as part of the term "interoperable video conferencing service."[43] Noting that the word "interoperable" had been inserted late in the CVAA drafting process, without explanation, and agreeing with some commenters that the word "cannot be read out of the statute,"[44] the Commission found that the record before it was insufficient to decide the correct interpretation, and sought further comment on the issue.[45]

15. Based on the record at that time, the Commission specifically invited comment on the following three possible definitions of the word "interoperable" as used in this context:

- Able to function inter-platform, inter-network, and inter-provider;
- Having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or
- Able to connect users among different video conferencing services, including VRS.[46]

16. In response to the *2011 ACS Further Notice*, commenters did not reach consensus on any of the three suggested alternatives.[47] Some commenters argued that the first of the three suggested definitions was too narrow,[48] while others contended that it was the only appropriate alternative.[49] The American Council of the Blind (ACB) and the American Foundation for the Blind (AFB) asserted that the term "'interoperable' should be read to refer to two-way, non-asynchronous video communication."[50]

17. Recently, the Commission refreshed the record on this matter. First, in April 2021, the Consumer and Governmental Affairs, Media, and Wireless Telecommunications Bureaus issued a joint Public Notice seeking comment generally on whether any updates were needed to the Commission's rules implementing the CVAA and inviting stakeholders to "provide input on aspects of the Commission's CVAA implementation that are working well, on specific areas in which commenters believe improvements are needed, and on requirements that may not be serving their intended purpose or have

[42] 47 CFR § 14.10(m).

[43] *2011 ACS Order*, 26 FCC Rcd at 14576, para. 46. As discussed below, the legislative history is silent as to why the word "interoperable" was added. Despite the late addition of the word, the definition of IVCS remained unchanged. *See infra* paras. 32-33.

[44] *2011 ACS Order*, 26 FCC Rcd at 14576, para. 47.

[45] *See 2011 ACS Further Notice*, 26 FCC Rcd at 14684-87, paras. 301-05.

[46] *Id*. at 14686, para. 303.

[47] Commenters on the relevant issues raised in the *2011 ACS Further Notice* are listed in Appendix A, and the comments are cited herein as "[Name] 2011 IVCS Comments" or "[Name] 2011 IVCS Reply Comments."

[48] Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA) 2011 IVCS Comments at 4-5 (stating that it is virtually impossible for any service to be "inter-provider, inter-network, and inter-platform"); Consumer Groups and RERC-TA 2011 IVCS Reply Comments at 8-9 (stating that "video teleconferencing systems . . . are not meant to interoperate directly with each other") (emphasis in original).

[49] Microsoft Corporation 2011 IVCS Comments at 5-8; Voice on the Net Coalition 2011 IVCS Comments at 4 ("The term 'interoperable' . . . should be defined as 'able to engage across a wide range of platforms, network, and providers.'"); Consumer Electronics Association 2011 IVCS Comments at 12 (urging the Commission to define "interoperable" as "the ability to operate among different platforms, networks, and providers without special effort or modification by the end user").

[50] ACB and AFB 2011 IVCS Reply Comments at 5.

been overtaken by new technologies."[51] In response, AARO commented that "the communications accessibility problem most cited by members of the Advocacy Organizations since the beginning of the COVID-19 pandemic has been the inaccessibility of modern IP-based multimodal platforms that offer an array of video, audio, and text communications functionality."[52] Some of the comments responding to the *2021 CVAA Refresh Public Notice* specifically addressed the interpretation of the term "interoperable video conferencing service." AARO, for example, urged the Commission to "simply clarify that the statutory definition of 'interoperable video conferencing service,' as a 'service that uses real-time video communications, including audio, to enable users to share information of the user's choosing,' is an exhaustive articulation of what Congress intended to be covered."[53]

18. Next, on April 27, 2022, the Commission's Consumer and Governmental Affairs Bureau (CGB or Bureau) released a Public Notice specifically inviting additional comment on the questions posed in the *2011 ACS Further Notice* as to the meaning of "interoperable video conferencing service."[54] The Bureau also "invite[d] commenters to submit additional relevant information about what types of services are currently available in the video conferencing marketplace, the kinds of interoperability they currently offer, and how such developments may assist in reaching an interpretation of 'interoperable video conferencing service' that is consistent with the intent of Congress in enacting the CVAA."[55] The Commission also sought comment on how consumers access video conferencing services, whether various components of such services are accessible and usable, and "any other developments that the Commission should consider in resolving this issue."[56]

19. Eight entities filed comments in response to the 2022 *IVCS Refresh Public Notice*; seven filed reply comments.[57] Commenters provided substantial information about how video conferencing

[51] *Consumer and Governmental Affairs, Media, And Wireless Telecommunications Bureaus Seek Update On Commission's Fulfillment of The Twenty-First Century Communications and Video Accessibility Act*, GN Docket No. 21-140, Public Notice, 36 FCC Rcd 7108, 7109 (2021) (*2021 CVAA Refresh Public Notice*). Commenters on the relevant issues raised in the *2021 CVAA Refresh Public Notice* are listed in Appendix A, and the comments are cited herein as "[Name] 2021 CVAA Refresh Comments" or "[Name] 2021 CVAA Refresh Reply Comments."

[52] *See* AARO 2021 CVAA Refresh Comments at 4. AARO includes Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), American Association of the DeafBlind (AADB), American Deafness and Rehabilitation Association (ADARA), Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Communications Service for the Deaf (CSD), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cuesign, Inc., Deaf Seniors of America (DSA), Hearing Loss Association of America (HLAA), HEARD, National Association of the Deaf (NAD), National Black Deaf Advocates (NBD), National Cued Speech Association (NCSA), National Hispanic Latino Association of the Deaf (NHLAD), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Registry of Interpreters for the Deaf (RID), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC), Rehabilitation Engineering Research Center for Wireless Inclusive Technologies, Georgia Institute of Technology (Wireless RERC), and RIT/NTID Center on Access Technology (CAT).

[53] AARO 2021 CVAA Refresh Comments at 13.

[54] *Consumer and Governmental Affairs Bureau Seeks to Refresh* the *Record on Interoperable Video Conferencing Services*, CG Docket No. 10-213, Public Notice, DA 22-463, at 3 (CGB Apr. 27, 2022) (*2022 IVCS Refresh Public Notice*).

[55] *Id*. at 5.

[56] *Id*.

[57] Commenters responding to the 2022 IVCS *Refresh Public Notice* are listed in Appendix A, and the comments are cited herein as "[Name] 2022 IVCS Refresh Comments" or "[Name] 2022 IVCS Refresh Reply Comments."

services are used today, including the extent to which such services are accessible and usable.[58] On the meaning of "interoperable video conferencing service," AARO, ACB, and AFB commented that standard principles of statutory interpretation compel application of the statutory definition without modification.[59] The groups also urged the Commission to mandate more specific guidelines on implementing accessibility of these services. CTIA and CTA countered that the word "interoperable" limits the scope of covered services. CTIA proposed an interpretation that covered services are those that are able to function "inter-platform and inter-network."[60] Pointing to dictionary definitions, CTA argued that the Commission should define "interoperable" as "the ability to operate among different platforms, networks and providers without special effort or modification by the end user."[61] Under CTIA's definition, a video conferencing service is "inter-platform" if users may access "the video conferencing service on *multiple* software platforms and operating systems, such as Google Android, Apple iOS, and Microsoft Windows."[62] A video conferencing service is "inter-network" if a user may "access a video conferencing service via the internet and on data networks, such as through a broadband connection like 4G LTE or 5G."[63] In reply comments, ACB and AFB state that video conferencing services that are provided on only one operating system, such as Apple's Facetime application, might not meet this definition of "inter-platform" and so "would likely not meet this narrow definition of IVCS."[64]

20. *Performance Objectives*. In response to the *2022 IVCS Refresh Public Notice*, commenters also disagree about whether additional performance objectives are necessary for IVCS.[65] CTA and CTIA argue that the existing performance objectives have produced accessible, innovative advanced communications services and equipment.[66] AARO urges adoption of the following performance objectives specifically for IVCS:

- Built-in closed captioning functionality;

[58] *See, e.g.,* AARO 2022 IVCS Refresh Comments at 1-2 ("IVCS now dominates communications in nearly all social, business, education, and healthcare settings."); AFB 2022 IVCS Refresh Comments at 1 ("Accessibility of video communications has been an important factor in equal participation and inclusion of people who are blind or have low vision in many aspects of society throughout the pandemic."); ClearCaptions, LLC (ClearCaptions) 2022 IVCS Refresh Comments at 1 ("Video conferencing is central to communications and ever more important due to remote learning and social distancing.").

[59] AARO 2022 IVCS Refresh Comments at 4; ACB 2022 IVCS Refresh Comments at 2; AFB 2022 IVCS Refresh Comments at 2.

[60] CTIA 2022 IVCS Refresh Comments at 2, 10.

[61] CTA 2022 IVCS Refresh Comments at 11, 13.

[62] CTIA 2022 IVCS Refresh Comments at 2 (emphasis added).

[63] *Id*. at 2.

[64] ACB and AFB 2022 IVCS Reply Comments at 1.

[65] To implement ACS accessibility, section 716(e)(1)(A) of the Act provides that, in prescribing regulations for that section, the Commission shall "include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities." 47 U.S.C. § 716(e)(1)(A). In the *2011 ACS Order*, the Commission adopted general, outcome-oriented performance objectives. *2011 ACS Order*, 26 FCC Rcd at 14647, para. 211; *see also* 47 CFR § 14.21. In the *2011 ACS Further Notice*, the Commission invited comment on whether to adopt more specific performance objectives with testable criteria. *2011 ACS Further Notice* at 14689, para. 310.

[66] CTA 2022 IVCS Refresh Comments at 1 ("The Commission's flexible approach to advanced communications services, along with industry-advocate collaboration, is increasing access to video conferencing services for individuals with disabilities."); CTIA 2022 IVCS Refresh Comments at 9 ("Maintaining the current performance-objective approach to ACS, which provides clarity and flexibility while eschewing any technical mandates, will best ensure the continued evolution of video conferencing platforms and myriad accessibility features that meet the unique needs of people with disabilities.").

- Integrated support for third-party captioning services and third-party video interpreting services;
- Compatibility with and access to current and next-generation relay services;
- Accessible user interface controls for the activation and customization of all video conferencing features, including the appearance of captions, ASL interpreters, and cued language transliterators.[67]

ACB argues that the Commission should consider performance objectives "for people who are blind, low vision, or DeafBlind."[68]

D. TRS and Video Conferencing

21. Enacted in 1990, Title IV of the Americans With Disabilities Act, codified as section 225 of the Communications Act, 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 eligible users in the United States.[69] TRS are defined as "telephone transmission services" enabling such persons to communicate by wire or radio "in a manner that is functionally equivalent to the ability of [a person without hearing or speech disabilities] to communicate using voice communication services."[70] There are currently three forms of Internet-based TRS: (1) Video Relay Service (VRS) "allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment;"[71] (2) Internet Protocol Relay Service (IP Relay) allows an individual with a hearing or speech disability to communicate with voice telephone users by transmitting text via the Internet;[72] and (3) Internet Protocol Captioned Telephone Service (IP CTS) permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.[73]

22. *TRS Fund*. The provision of Internet-based TRS is supported by the TRS Fund.[74] In addition, the TRS Fund supports interstate use of certain non-Internet-based relay services, which are provided through state TRS programs.[75] Entities required to make contributions to the TRS Fund include

[67] AARO 2022 IVCS Refresh Comments at 15.

[68] ACB 2022 IVCS Refresh Comments at 2 (asserting that the Commission should adopt "performance standards for people who are blind, low vision or DeafBlind" and "it is our strong preference that industry work together with advocates to develop international or national performance-based standards for ACS, including IVCS").

[69] 47 U.S.C. § 225(b)(1).

[70] *Id*. § 225(a)(3).

[71] 47 CFR § 64.601(a)(51); *see also Structure and Practices of the Video Relay Service Program,* CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5548-49, para. 2 (2011) (*2011 VRS Call Practices Order*).

[72] 47 CFR § 64.601(a)(23). The text transmission is delivered to an IP Relay call center, where a CA converts the user's text to speech for the hearing party and converts that party's speech to text for the IP Relay user. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7780-81, paras. 3-4 (2002) (*2002 IP Relay Declaratory Ruling*).

[73] 47 CFR § 64.601(a)(22); *see Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 385, para. 14 (2007) (*2007 IP CTS Declaratory Ruling*).

[74] 47 CFR § 64.604(c)(5)(iii)(A).

[75] *Id*.

providers of telecommunications service, interconnected VoIP service, and non-interconnected VoIP service.[76]

23. *DAC Report on TRS and Video Conferencing*. The structure of the Commission's TRS program reflects the fact that, historically, most people have used wireline or wireless telephone networks to communicate remotely by voice. Thus, North American Numbering Plan (NANP) telephone numbers are used to route calls between TRS users and hearing people,[77] and the provision of TRS, to date, has typically included a voice-only telephone call, with originating and terminating NANP numbers. To address concerns about the inaccessibility of video conferencing platforms, the Commission requested the Disability Advisory Committee to study the use of TRS on IVCS platforms. In a report delivered in February 2022, the committee states:

> It is impossible for users of most video conferencing platforms and most TRS providers to natively interconnect their preferred TRS provider to video conferencing platforms. Typically, TRS users can only interconnect their preferred TRS provider to a video conferencing platform by dialing in via the public switched telephone network (PSTN).[78]

24. Such a dial-in connection is often unavailable.[79] Further, the committee explains, when a dial-in connection to a video conference is available, a TRS user may encounter multiple difficulties.[80] For example, the user must use two separately connected devices—one to participate in the video portion of the conference and the other to communicate with the TRS provider's CA, who is only connected to the video conference via an audio-only dial-in connection.[81] As a result, the user must navigate multiple user interfaces, which can cause confusion, fatigue, and other barriers to full participation in a video conference.[82] The committee also explains that, if multiple TRS users join the conference, with each user having a double "presence" as the user's video image and a CA's voice-only icon, the result can increase the overall cognitive load for video conference hosts and participants to process discussion and facilitate shared dialogue.[83] Further, the CA's audio-only connection may result in poor audio quality, causing errors in interpretation or captioning.[84] The committee also explains that it is not clear whether the Commission's rules allow other methods of linking a TRS CA to a video conference.[85]

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[76] *Id*.

[77] For example, Internet-based TRS providers assign users NANP telephone numbers and maintain those numbers in the TRS Numbering Directory, which is used to route calls between Internet-based TRS users and end users served by other service providers. 47 CFR § 64.613; *see also Telecommunications Relay Services And Speech-to-Speech Services For Individuals With Hearing And Speech Disabilities, E911 Requirements For IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (2008).

[78] DAC Video Conferencing Report at 2. Since the DAC recommendations were published, one VRS provider has reported that it now offers a means of integrating its provision of VRS with one video conferencing platform. *See* Letter from John T. Nakahata, Counsel to Sorenson Communications, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed Mar. 10, 2023); *Sorenson-for-Zoom*.

[79] DAC Video Conferencing Report at 2.

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

[81] *Id*. at 3.

[82] *Id*.

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

[84] *Id*. at 4.

[85] *Id*.

25. For all these reasons, the Disability Advisory Committee recommends that the FCC resolve these issues by:

- Facilitating a technical mechanism for TRS providers to natively interconnect TRS services, including video, audio, captioning, and text-based relay to video conferencing platforms;
- Ensuring that users can seamlessly initiate TRS from the provider of their choice on any video conferencing platform;
- Addressing the integration of CAs and the overall accessibility challenges of videoconferencing platforms; and
- Clarifying the legal ability of TRS providers to seek compensation for service provided for video conferences from the TRS Fund.[86]

26. *Sorenson Petition*. On December 19, 2022, Sorenson filed a petition seeking a limited waiver of the VRS privacy screen rule.[87] A visual privacy screen is a feature that prevents one party on the video leg of a VRS call from viewing the other party.[88] The privacy screen rule prohibits a VRS CA from enabling a visual privacy screen or similar feature during a VRS call, and requires a VRS CA to disconnect a VRS call if the caller or called party enables a visual privacy screen or similar feature for more than five minutes or is otherwise unresponsive for more than five minutes.[89] Sorenson seeks a partial waiver of the rule so that VRS users participating in video conferences are allowed to turn off their video connections when not presenting or for other reasons not related to inactivity. On January 12, 2023, the Bureau sought comment on the Sorenson Petition.[90] AARO, the lone commenter, supported grant of the Sorenson Petition.[91]

III. REPORT AND ORDER

27. The rapid growth of video conferencing underscores the need to resolve lingering uncertainty as to the application of our accessibility rules in this area. As recent comments make clear, the social shift born of the pandemic has altered the norms of modern communication.[92] The record, other relevant FCC documents, and public sources indicate that substantial barriers to effective communication remain for many people with disabilities,[93] supporting AARO's general assessment that "*some* video conferencing services are accessible to *some* people with *some* disabilities in *some* contexts."[94] As video conferencing becomes further entrenched as an essential means of communication, it is of critical importance to resolve the extent to which these services are covered by section 716 and our accessibility

[86] *Id*. at 4-5.

[87] Sorenson Petition.

[88] *See* 47 CFR § 64.601(a)(52) (defining "visual privacy screen").

[89] *See id*. § 64.604(a)(6); *see also 2011 VRS Call Practices Order*, 26 FCC Rcd at 5567, para. 41.

[90] *See Consumer and Governmental Affairs Bureau Seeks Comment on Sorenson Communications, LLC's Petition for a Limited Waiver of the Privacy Screen Rule for Video Relay Service*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 23-28 (CGB Jan. 12, 2023). Commenters on the relevant issues raised in the Sorenson Petition are listed in Appendix A, and the comments are cited herein as "[Name] Sorenson Petition Comments."

[91] AARO Sorenson Petition Comments, CG Docket Nos. 03-123 and 10-51, at 3-4 (filed Feb. 13, 2023).

[92] *See* Eric Griffith, *Hate Being on Live Calls? Sorry, They're Here to Stay*, (Aug. 29, 2022), https://www.pcmag.com/news/hate-being-on-live-video-calls-sorry-theyre-here-to-stay.

[93] *See* AARO 2021 CVAA Refresh Comments at 4; AFB 2022 IVCS Refresh Comments at 1 ("Barriers include navigating the user interface and accessing information shared by other users."); AFB 2022 CVAA Report Comments at 2-3 (describing specific accessibility concerns with WebEx, Microsoft Teams, and the desktop version of Slack).

[94] AARO 2022 IVCS Refresh Reply Comments at 4 (emphasis added).

rules. In the absence of clarity, service providers are left uncertain as to their obligations, and consumers face an inconsistent patchwork of accessibility features that limit their ability to reliably achieve effective communication.[95]

28. In light of these changed circumstances, and taking into account comments in the record, we revisit the Commission's previously stated views regarding the interpretation of the statutory term "interoperable video conferencing service."[96] The Act defines "interoperable video conferencing service" as "a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing."[97] As explained below, we find no persuasive reason to modify or limit the scope of the statutory definition of this term. Therefore, we decline to revise Part 14 of our rules, which incorporates the statutory definition, and we conclude that Part 14 applies to all services and equipment that "provid[e] real-time video communications, including audio, to enable users to share information of the user's choosing."[98]

29. By its terms, the statutory definition of "interoperable video conferencing service" encompasses a variety of video communication services that are commonly used today, or that may be used in the future, to enable two or more users to share information with one another.[99] Nothing in the definition suggests that it is limited to services that are only suitable for particular kinds of users—e.g., professional users who need a wide selection of features and tools to conduct online meetings, or casual users who want to have spontaneous video conversations with friends.[100] The definition also does not indicate an intention to exclude any service based on whether it is used primarily for point-to-point or multi-point conversations,[101] or based on the type of device used to access the service.[102] Similarly, based on the wording of this definition, its application does not depend on the options offered to users for connecting to a video conference (e.g., through a dial-up telephone connection or by broadband, through a

[95] *Id*. at 4.

[96] *See 2011 ACS Order*, 26 FCC Rcd at 14576.

[97] *Id*.

[98] 47 U.S.C. § 153(27).

[99] In 2011, the Commission interpreted a qualifying phrase in the definition—"to enable users to share information of the user's choosing"—to mean that services "providing real-time video communications, including audio, "*between two or more users*" would be included, "even if they can also be used for video broadcasting purposes (*only from one user*)." *2011 ACS Order*, 26 FCC Rcd at 14578, para. 50 (emphasis in original). However, a service that provides real-time video and audio communications "*only from one user*" (i.e., "video broadcasting") would *not* meet the definition of "interoperable video conferencing service." *Id*. (emphasis in original).

[100] *See, e.g.*, Edgar Cervantes, *Zoom vs Facetime: Which is right for you?* (Jan. 23, 2022), Android Authority, https://www.androidauthority.com/zoom-vs-facetime-1106307/ (explaining that some "video calling services are made with very different users in mind").

[101] *See* Dana Miranda and Rob Watts, *What Is Video Conferencing?*, Forbes Advisor (updated Aug. 6, 2022), https://www.forbes.com/advisor/business/what-is-video-conferencing/ (*What Is Video Conferencing*) (stating that a video conference can be point-to-point, i.e., "[a] one-on-one conversation involving two participants in different locations," or multi-point, i.e., "a conversation that involves three or more people in at least two locations").

[102] *See* Julia Kagan, *Video Conferencing: How It Works, How to Use It, Top Platforms*, Investopedia (updated June 2, 2022), https://www.investopedia.com/terms/v/video-conferencing.asp (noting that "individuals may use web cameras connected to or built into laptops, tablets, or desktop computers, as well as [s]martphones and other connected mobile devices equipped with cameras," while "[s]ome businesses use dedicated video conferencing rooms that have been equipped with high-grade cameras and screens to ensure the conversation is clear and with limited technical faults."); *see also What Is Video Conferencing*.

downloadable app or a web browser),[103] what operating systems or browsers their devices may use, whether the service works with more than one operating system, or whether the service may be classified as offered to the public or to a private group of users (such as a telehealth platform). What matters is that two or more people can use the service to share information with one another in real-time, via video.

30. As AARO and AFB explain, narrowing the scope of our Part 14 rules to a more limited class of services by importing our own definition of "interoperable" would bring those rules into conflict with the definition mandated by Congress.[104] In terms of our codified rules, this conclusion maintains the status quo, as the statutory definition of "interoperable video conferencing service" has been incorporated in the Commission's rules for more than a decade.[105]

31. While the Commission stated in 2011 that it "must determine [the] meaning [of 'interoperable'] in the context of the statute,"[106] in light of the further comments we received we conclude that, as the Supreme Court has repeatedly held, "'[w]hen a statute includes an explicit definition, we must follow that definition,' even if it varies from a term's ordinary meaning."[107] Here the interpretation of the statutory term has already been given by the statutory definition: IVCS is "a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing." Because that definition does *not* include the word "interoperable," it is unnecessary to construe that word separately in this context.[108]

32. The legislative history of the CVAA also supports our conclusion that we may rely on the statutory definition of "interoperable video conferencing service" without further elaboration on the word "interoperable." As the Commission noted in 2011, early versions of the legislation used the term "video conferencing service," without the word "interoperable."[109] The term was left unchanged in the House of

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[103] *See What Is Video Conferencing* (explaining that certain "services require all participants to download software if they want to send audio or video," while others permit users to "start a meeting without creating an account or downloading software").

[104] AFB Comments at 2; AARO Comments at 5 ("The Commission may not impose further limitations on the scope of IVCS beyond those limitations explicitly provided by Congress.").

[105] 47 CFR § 14.10(m); *2011 ACS Order*, 26 FCC Rcd at 14708-09 (adopting the statutory definition of IVCS).

[106] *2011 ACS Order*, 26 FCC Rcd at 14577, para. 47.

[107] *Tanzin v. Tanvir*, 141 S. Ct. 486, 490 (2020) (quoting *Burgess v. United States*, 553 U.S. 124, 130 (2008)); *see also Stenberg v. Carhart,* 530 U.S. 914, 942 (2000). As Justice Cardozo explained in *Fox* v. *Standard Oil Co. of N.J.*, 294 U.S. 87, 95-96 (1935):

> There might be force in this suggestion [that the Court should interpret a defined term in accord with its ordinary usage] if the statute had left the meaning of its terms to the test of popular understanding. Instead, it has attempted to secure precision and certainty by rejecting a test so fluid and indeterminate and supplying its own glossary. . . . In such circumstances definition by the average man or even by the ordinary dictionary with its studied enumeration of subtle shades of meaning is not a substitute for the definition set before us by the lawmakers with instructions to apply it to the exclusion of all others.

[108] AARO 2022 IVCS Refresh Comments at 5 (stating that the CVAA "affords the Commission no latitude to interpret the term 'interoperable' separately from the statute's explicit definition of 'interoperable video conferencing service'"). In cases of circularity—where the statutory term and the statutory definition of that term include a common word—it might be appropriate for an agency to interpret the common word. That is not the case here because "interoperable" does not appear in the statutory definition.

[109] *2011 ACS Order*, 26 FCC Rcd at 14576, para. 46.

Representatives committee report on H.R. 3101, released in July 2010.[110] However, in the Senate report on S. 3304, released in December 2010, the Senate Committee on Commerce, Science, and Transportation added the word "interoperable" to "video conferencing service."[111] The Commission has found nothing in the legislative history of the CVAA to explain why the word was added, or what that change was meant to communicate, if anything. "The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers."[112]

33. Additionally, nothing in the legislative history suggests that Congress intended for the insertion of "interoperable" in the defined term to change the draft bill's existing definition of "video conferencing service." The definition remained the same in all versions, even when the term it was defining metamorphosed without explanation.[113] This compels us to conclude that, whatever reason the Senate Committee may have had for altering the term used to describe the service, there was no intent to alter the definition of that term or to require separate interpretation of any word within that defined term.

34. *Alternative Suggested Definitions*. We find unpersuasive the alternative definitions of "interoperable video conferencing service" that various commenters proffer in lieu of the statutory definition.[114] CTA continues to advocate a proposal advanced in 2011: that covered services be limited to those that have "the ability to operate among different platforms, networks and providers without special effort or modification by the end user."[115] At that time, the Commission expressed concern that "this proposed definition would exclude virtually all existing video conferencing services and equipment from the accessibility requirements of Section 716, which we believe would be contrary to Congressional intent."[116] In its 2022 comments, citing the development of standards that improve interoperability, CTA suggests that its proposed definition would include a number of commonly used video services such as Webex, Google Meet, and BlueJeans by Verizon.[117] However, CTA emphasizes that its approach "will ensure that only the subset of video conferencing services that are genuinely interoperable is covered under section 716."[118]

35. CTIA suggests a modified version of this formulation that would limit covered services to those that can "function inter-platform and inter-network."[119] Under CTIA's proposal:

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[110] *See* Twenty-First Century Communications and Video Accessibility Act of 2010, H. Rept. 111-563, 111th Cong. (2010), https://www.congress.gov/congressional-report/111th-congress/house-report/563/1.

[111] *See* Twenty-First Century Communications and Video Accessibility Act of 2010, S. Rept. 111-386, 111th Cong. (2010), https://www.congress.gov/congressional-report/111th-congress/senate-report/386/1.

[112] *Trailmobile Co. v. Whirls*, 331 U.S. 40, 61 (1947).

[113] As the D.C. Circuit noted in 1982, courts must "exercise caution before drawing inferences regarding legislative intent from changes made in committee without explanation. … amendments to a bill's language are frequently latent with ambiguity; they may either evidence a substantive change in legislative design or simply a better means for expressing a provision in the original bill." *Western Coal Traffic League v. U.S.*, 677 F.2d 915, 924 (D.C. Cir. 1982).

[114] Some commenters also stress that the Commission should not use this proceeding to mandate that video conferencing services be interoperable. CTIA Comments at 11-12; CTA Reply Comments at 4. That is a different question, which the Commission settled in 2011: There is no language in the CVAA supporting the view that interoperability is required or should be required as a subset of "accessibility," "usability," or "compatibility." *2011 ACS Order*, 26 FCC Rcd at 14577, para. 48. We see no need to revisit that question.

[115] CTA 2022 IVCS Refresh Comments at 13; *see also 2011 ACS Order*, 26 FCC Rcd at 14684-85, para. 301 (seeking comment on "inter-platform, inter-network, and inter-provider" interpretation of "interoperable").

[116] *2011 ACS Order*, 26 FCC Rcd at 14684-85, para. 301.

[117] CTA 2022 IVCS Refresh Comments at 12-13 & n.37.

[118] *Id*. at 13.

> Inter-platform refers to the ability of a user to access a video conferencing service on multiple software platforms and operating systems, such as Google Android, Apple iOS, and Microsoft Windows, and "inter-network" refers to the "ability of a user to access a video conferencing service via the internet and on data networks, such as through a broadband connection like 4G LTE or 5G.[120]

According to CTIA, "[t]his definition reflects the video conferencing market today, which likely means the most widely used services today would be covered by the Commission's ACS rules."[121] Nonetheless, like CTA, CTIA acknowledges that its interpretation would narrow covered services to a smaller group than those fitting under the statutory definition.[122] ACB and AFB state that vertically integrated services such as Apple Facetime "would likely not meet [CTIA's] narrow definition of IVCS."[123]

36. The fundamental defect of these proposed alternatives is that they substantially alter the definition of "interoperable video conferencing service" provided by Congress. Supporters of alternative definitions fail to show how their proposed approaches, which they acknowledge are less inclusive than the statutory definition, could be harmonized with Congress' definition. Instead, CTA and CTIA argue that relying on the statutory definition would render the word "interoperable" superfluous, effectively reading the word out of the statute.[124]

37. We reject CTA and CTIA's argument because it is far from clear that "interoperable" is superfluous. For instance, information sharing cannot take place at all without some degree of interoperability between the devices or software that each sharing user operates. The inclusion of the word "interoperable" in the term "interoperable video conferencing service" may simply reflect the fact that any video service satisfying that definition—i.e., any real-time video communication service that "enable[s] users to share information of the user's choosing"[125]—necessarily involves some level of interoperability among the particular devices and software employed by users of that service.

38. In any event, while the Commission should "construe statutes, *where possible*, so as to avoid rendering superfluous any parts thereof,"[126] it is not always "possible" to do so, given the

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[119] CTIA 2022 IVCS Refresh Comments at 2. By contrast with CTA's proposed definition, CTIA's proposal would define "interoperable video conferencing services" to include services that are interoperable "inter-platform and inter-network" but that are *not* interoperable between different providers.

[120] *Id*. at 10.

[121] *Id*.; *see also* ACB 2022 IVCS Refresh Reply Comments at 1 (stating that CTIA's proposed definition "would cover many services available today"); AARO 2022 IVCS Refresh Reply Comments at 13 (stating that "the operating-systems-and-Internet definition provides the most plausible way forward if the Commission concludes it must define interoperability separately").

[122] CTIA 2022 IVCS Refresh Comments at 12 (contrasting its approach with a simple application of the statutory definition, which "would be so sweeping as to *discourage* investment and innovation in accessible video conferencing services") (emphasis in original).

[123] ACB and AFB 2022 IVCS Refresh Reply Comments at 1-2.

[124] CTA 2022 IVCS Refresh Comments at 10; CTIA 2022 IVCS Refresh Comments at 12.

[125] 47 U.S.C. § 153(27).

[126] *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991) (emphasis added); *see also Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty 'to give effect, *if possible*, to every clause and word of a statute' (quoting *U.S. v. Menasche*, 348 U.S. 528, 538-39 (1995)) (emphasis added); CTA Comments at 10 (citing these cases).

imperfections of the legislative process. Further, we must also read the text harmoniously.[127] Accordingly, interpretations that result in irreconcilable internal discord must be rejected. In this instance, as the proponents agree,[128] their interpretive attempts to give independent meaning to the word "interoperable" are inconsistent with the statutory definition. Therefore, we must conclude that it is not "possible" to interpret "interoperable" in the way that these commenters request.

39. *Administrative Procedure Act Notice*. We also conclude that the Commission has provided adequate notice in this proceeding that we could arrive at the decision we reach today. The *2022 IVCS Refresh Public Notice*, which was published in the Federal Register, invited the public to "file additional comments on the questions posed in the *2011 ACS Further Notice* regarding the meaning of the term 'interoperable' in the context of video conferencing services and equipment."[129] In the very next sentence, the *2022 IVCS Refresh Public Notice* made direct reference to a recent filing by AARO proposing that the Commission apply the statutory definition.[130] The *2022 IVCS Refresh Public Notice* also specifically invited commenters to "suggest additional alternatives or other types of input on how to interpret [the word 'interoperable']" beyond the three approaches suggested by the Commission in 2011.[131] The *2022 IVCS Refresh Public Notice* thus provided ample indication that the interpretive question could have a broader range of outcomes than those specifically suggested in 2011.

40. Even assuming, *arguendo*, that notice was lacking, we find no conflict with the Administrative Procedure Act. Contrary to the arguments of several commenters, it is procedurally proper for the Commission, in this *Report and Order*, to conclude that "interoperable video conferencing service" has the meaning given by the statutory definition.[132] In this *Report and Order*, the Commission is not adopting or amending any substantive rule.[133] Therefore, the notice-and-comment requirements of the Administrative Procedure Act are not implicated by any action taken here. We are simply revisiting the Commission's prior assertion, in the *2011 ACS Report and Order*, of a perceived need to resolve, through further interpretation, the correct interpretation of the word "interoperable." At most that assertion was an interpretive rule, and hence prior notice was not required to revisit that interpretation.[134] The Supreme Court has confirmed that the adoption or modification of interpretive rules occur outside the APA's notice-and-comment requirements.[135]

41. *Effective Date*. This Report and Order will be effective thirty days after publication of a summary in the Federal Register. Given the extended pendency of questions regarding the application of

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[127] *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation Of Legal Texts, 180-82 (2012) (stating that the "Harmonious-Reading" canon of statutory interpretation provides that "[t]he provisions of a text should be interpreted in a way that renders them compatible, not contradictory.").

[128] CTA 2022 IVCS Refresh Comments at 13; CTIA 2022 IVCS Refresh Comments at 12.

[129] *2022 IVCS Refresh Public Notice* at 5.

[130] *Id*.

[131] *Id*.

[132] *See* CTIA 2022 IVCS Refresh Reply Comments at 6 (stating that "the Commission raised the issue of what interoperable means, not whether it has any meaning"); CTA 2022 IVCS Refresh Reply Comments at 4 (arguing that the Commission "has not provided any indication that the agency is considering revising its holding [that '"interoperable" cannot be read out of the statute'], and there are no pending petitions for reconsideration before the Commission on this issue").

[133] As noted above, the Commission's rules already incorporate the statutory definition of "interoperable video conferencing service."

[134] *See* 5 U.S.C. 553(b)(A).

[135] *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96 (2015) (stating that the APA's notice-and-comment requirement "does not apply to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice").

these requirements to video conferencing, we recognize that some service providers may need additional time to fully comply with this Report and Order. For that reason, we extend the date for compliance with the Part 14 video conferencing service rules until one year from the effective date. The Commission directs the Consumer and Governmental Affairs Bureau to announce the compliance date by subsequent Public Notice.

IV. NOTICE OF PROPOSED RULEMAKING

42. We propose to amend our rules to improve the accessibility of video conferencing, whether used for work, education, healthcare, entertainment, or other activities.[136] First, to address "the integration of [TRS] CAs and the overall accessibility challenges of videoconferencing platforms,"[137] we propose to adopt additional performance objectives for the accessibility of interoperable video conferencing services.[138] We specifically propose that such performance objectives (1) include the provision of speech-to-text (e.g., captioning of all voice communications in a video conference) and text-to-speech; and (2) enable the use of sign language interpreting. We seek comment on whether additional amendments are needed to ensure that video conferencing is accessible. We also seek comment on whether technical standards are available or could be fashioned for use as safe harbors,[139] whereby certain performance objectives for IVCS can be satisfied by providing access to relevant forms of TRS.[140]

43. Second, we propose to amend our Part 64 rules to provide that the TRS Fund can be used to support the provision of TRS for video conferencing users—whether or not the video conferencing platform can be accessed via a NANP telephone call.[141] In addition, we propose certain modifications to our rules to specify the conditions under which the TRS Fund will support the provision of TRS with video conferencing.

A. Amending Part 14 to Improve the Accessibility of Video Conferencing

1. Performance Objectives

44. Section 716 of the Act directs the Commission to adopt "performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services."[142] To implement this requirement, the Commission in 2011 adopted general performance objectives specifying that (1) input, control, and mechanical functions are "locatable, identifiable, and operable" by people with disabilities and that (2) "[a]ll information necessary to operate and use the product" is available to people

[136] The proposals in this Notice of Proposed Rulemaking are applicable to those services that fit the statutory definition of "interoperable video conferencing service." *See* 47 U.S.C. § 153(27); 47 CFR § 14.10(m) (incorporating the statutory definition); *see also supra* note 99 (noting that a service that provides real-time video and audio communications only from one user would not meet the definition of "interoperable video conferencing service"). In this Notice of Proposed Rulemaking, when we refer to "video conferencing" or "video conferences," we mean video conferencing or video conferences that involve the use of an interoperable video conferencing service, as defined.

[137] DAC Video Conferencing Report at 5; *see also id*. at 6 (providing a detailed recommendation).

[138] *See* 47 U.S.C. § 617(e)(1)(A); 47 CFR § 14.21.

[139] *See* 47 U.S.C. § 617(e)(1)(D).

[140] *See* DAC Video Conferencing Report at 5 (recommending that the Commission "facilitate the development of an application programming interface (API) or other standardized technical mechanism to allow TRS providers to directly interconnect to video conferencing platforms" and "work with all stakeholders to ensure that TRS users can use standard user interfaces on all video conferencing platforms to join their preferred TRS provider to a video conference, in real-time").

[141] *See id*. at 5 (recommending that the Commission "[c]larif[y] the legal ability of TRS providers to seek compensation for service provided for video conferences from the TRS Fund"); *see also id*. at 6 (providing additional explanation of this recommendation).

[142] 47 U.S.C. § 617(e)(1)(A).

with disabilities."[143] For example, ACS must be "[o]perable without hearing," which is defined to mean "[p]rovide at least one mode that does not require user auditory perception."[144] These general performance objectives are applicable to IVCS as well as other types of ACS.

45. We believe that the Commission's Part 14 performance objectives have encouraged innovative and effective approaches to achieve accessibility for covered equipment and services. However, given the seismic shift in how we communicate, and based on this proceeding's record and the Disability Advisory Committee Report, we seek comment on whether to amend the rules to define more specific objectives for making IVCS accessible.[145] We note that some IVCS providers have added accessibility features to their products in response to consumer need during the COVID-19 pandemic.[146] We seek comment on the effectiveness of these features in providing accessibility, the extent of their availability, their ease of use, and how they could be improved. We also seek comment on what other features may be necessary to make IVCS accessible and how the current performance objectives could be modified or supplemented to ensure that such features are provided if achievable.

46. *DAC Recommendations*. As the Disability Advisory Committee has explained, without the ability to have other participants' audio communications converted to text or sign language, as appropriate, and to have their own text or sign language communications converted to speech, a person who is deaf or hard of hearing or has a speech disability may not be able to effectively participate in a video conference.[147] The Committee recommends that the Commission ensure "at a minimum" that video conferencing platforms:

- Include built-in closed captioning functionality that is available to all users, including to users with free accounts if the platform provides such accounts;
- Fully integrate support for TRS CAs, including video, audio, captioning, and text communication; and
- Allow users, including CAs, to control the activation and customize the appearance of captions and video interpreters, including caption activation, size, color, background, layout, and positioning, pinning and multi-pinning, side-by-side views, hiding non-video participants, including ASL interpreters, [Certified Deaf Interpreters], other interpreters, and cued language transliterators, and exercise this control on their own clients without reliance on video conference hosts.[148]

47. We propose to amend the Part 14 performance objectives to address these recommendations and promote innovative future solutions for making IVCS accessible. Consistent with section 716 of the Act,[149] our proposals would permit IVCS providers to choose whether to satisfy their accessibility obligations by including certain features as native applications or by "using third party applications, peripheral devices, software, hardware, or CPE that is available to the consumer at nominal

[143] 47 CFR § 14.21(b). These performance objectives provide a definition of "accessible" for purposes of the Part 14 rules. Other performance objectives define "usable" and "compatible." *Id*. § 14.21(c), (d).

[144] *Id*. § 14.21(b).

[145] *See, e.g.*, AARO 2022 IVCS Refresh Reply Comments at 15-17.

[146] *See* CTIA 2022 IVCS Refresh Comments at 7-8.

[147] *See, e.g.*, AARO 2022 IVCS Refresh Reply Comments at 15-17.

[148] DAC Video Conferencing Report at 6; *see also* AARO 2021 CVAA Refresh Comments at 14-15 (urging similar measures); AARO 2022 IVCS Refresh Comments at 21 (same).

[149] 47 U.S.C. § 617(b)(2).

cost[150] and that individuals with disabilities can access."[151]

48. *Captions*. We propose to adopt, as a performance objective specific to IVCS, the provision of captions for the audio communications in video conferences.[152] As AARO has explained, for people who are deaf or hard of hearing, "a lack of captions can make meaningful interaction impossible."[153] Some video conferencing platforms offer captions, which are typically provided via ASR.[154] However, according to the Disability Advisory Committee, captions are not available on all platforms, or on all video conferences for platforms that do provide them, and where they are available they may be of "insufficient quality to ensure functional equivalence."[155]

49. As explained in the *2022 CVAA Report to Congress*, automatic captioning, when available, sometimes produces incomplete or delayed transcriptions, while the delays inherent in live captioning can lead to "cognitive overload" as users try to follow poorly synchronized visual and textual conversations.[156] In addition, because voice conversations go quickly and it may be difficult to immediately identify who is speaking, video conferences may cause some people who are deaf or hard of hearing to lose vital portions of voice communications.[157] Finally, as the Commission has noted with regard to automatic captioning in other forms of TRS, some research indicates that ASR technology may show algorithmic bias in the accuracy with which it transcribes voices, particularly in the transcription of certain speakers.[158]

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[150] "Nominal cost" means that "any fee for third-party software or hardware accessibility solutions [shall] be 'small enough so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires.'" *2011 ACS Order*, 26 FCC Rcd at 14621, para. 152.

[151] 47 U.S.C. § 617(b)(2)(B). We note that IVCS providers must maintain records of their efforts to ensure that their services and products are accessible, 47 CFR § 14.31(a), and the rules do not provide an exemption from this requirement for service providers who rely on third-party applications or equipment to achieve accessibility.

[152] Concerns about user interface control of caption placement and other aspects of accessibility features are discussed below. *See infra* paras. 58-59.

[153] AARO 2022 IVCS Refresh Comments at 8.

[154] DAC Video Conferencing Report at 2-3. *See*, *e.g.*, Zoom Support, https://support.zoom.us/hc/en-us/articles/8158738379917-Managing-automated-captions (last visited May 16, 2023) ("These [automatic caption] options can be enabled and used by participants to easily follow the conversations or to meet accessibility requirements."); Microsoft, https://support.microsoft.com/en-us/office/use-live-captions-in-a-teams-meeting-4be2d304-f675-4b57-8347-cbd000a21260 (last visited May 16, 2023) ("Use live captions in a Teams meeting.").

[155] DAC Video Conferencing Report at 2-3; *see also* AARO 2022 IVCS Refresh Comments at 9-10.

[156] *2022 CVAA Report to Congress*, para. 23.

[157] Mark Ray, *Why Remote Work Can Be Hard For Hard-Of-Hearing People*, Forbes (Mar. 29, 2022), https://www.forbes.com/sites/nextavenue/2021/09/02/why-remote-work-can-be-hard-for-hard-of-hearing-people/?sh=76a3d4c46d71) (writing that "people with hearing loss rely more on nonverbal information than their peers . . . . They can miss visual clues, such as when a colleague is about to speak, and fall behind").

[158] *Internet Protocol Captioned Telephone Service Compensation; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service;* CG Docket Nos. 22-408, 03-123, 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97, para. 16 & n.43 (Dec. 22, 2022) (citing Allison Koenecke et al., "Racial disparities in automated speech recognition," Proceedings of the National Academy of Sciences, Vol. 117 No. 14 (2020), https://www.pnas.org/doi/10.1073/pnas.1915768117 (studying "state-of-the-art ASR systems" developed by five major tech companies and finding an average word error rate of 35% for black speakers compared to 19% for white speakers)); *see also* Joshua L. Martin and Kelly Elizabeth Wright, "Bias in Automatic Speech Recognition: The Case of African American Language," Applied Linguistics (2022), https://academic.oup.com/applij/advance-article/doi/10.1093/applin/amac066/6901317 (discussing the impact of bias in ASR in employment and healthcare contexts).

50. We propose to amend section 14.21 of our rules to make clear that captioning is an essential component of accessibility in the context of IVCS. Section 14.21(b)(2)(iv) currently specifies that accessibility includes "[p]rovid[ing] auditory information through at least one mode in visual form and, where appropriate, in tactile form."[159] As noted above, however, the record indicates that not every IVCS offers captioning, and that where captioning is offered, the quality is often uneven. Therefore, we propose to amend section 14.21(b)(2)(iv) to read (with proposed new text shown in bold):

> 14.21(b)(2)(iv): *Availability of auditory information*. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form. **For interoperable video conferencing services, provide at least one mode with captions that are accurate and synchronous. The accuracy and latency of such captions should be at minimum comparable to that provided on TRS Fund-supported captioned telephone services.**

51. We seek comment on this proposal. Does this language provide an appropriate level of specificity, given, on the one hand, the need for effective guidance on what accessibility requires, and on the other, the need to allow flexibility in implementation[160] and innovative solutions, and to avoid mandatory technical standards?[161] Is this level of quality sufficient to provide a functionally equivalent experience for all users, including users of color or users with accents? Alternatively, we invite comment on the extent to which current performance objectives, such as section 14.21(b)(2)(i), already require that IVCS provide an appropriate level of caption quality.[162] How can the FCC promote improvements in ASR technology to address any existing algorithmic bias?

52. In some instances, the host of a video conference may prefer (or have a legal obligation) to use another captioning service—be it live captioning or automatic speech recognition—rather than the IVCS provider's captioning feature. According to the Disability Advisory Committee:

> When out-of-band interpreters, transliterators, or captioners can be secured, many video conferencing platforms do not provide sufficient accessibility features to ensure that they can be integrated properly in a video conference to ensure accessibility. Some video conferencing platforms have problems properly joining and integrating caption streams to be displayed on streams, requiring users to open a separate web

[159] 47 CFR § 14.21(b)(2)(iv).

[160] *See* 47 U.S.C. § 617(a)(2), (b)(2).

[161] *See id*. § 617(e)(1)(D). The Commission has a pending proceeding on quantifying minimum standards for the quality of captions provided by TRS Fund-supported captioned telephone services (CTS and IP CTS) and establishing methods of measuring caption quality. *See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10898-903, paras. 66-91 (2020) (*2020 IP CTS Order*). Pending completion of that proceeding, this proposed performance objective states that caption quality should be generally comparable to that offered by TRS Fund-supported services. In the future, with the adoption of metrics for CTS and IP CTS by the Commission, such metrics could serve as a safe-harbor technical standard for IVCS as well.

[162] *See* 47 CFR § 14.21(b)(2)(i) ("*Operable without vision*. Provide at least one mode that does not require user vision."); *see also id*. § 14.21(b)(2)(ii) ("*Operable with low vision and limited or no hearing*. Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output."); *id*. § 14.21(b)(2)(iii) ("*Operable with little or no color perception*. Provide at least one mode that does not require user color perception.").

browser or application to view captions.[163]

53. To address this concern, we seek comment on whether to specify that IVCS enable the use of alternative captioning methods, such as Communication Access Realtime Translation (CART).[164] Similarly, should IVCS be compatible with TRS Fund-supported captioning, so that such captioning can be displayed in a video conference if requested by a TRS user?[165] Is there a commonly used technology that would enable the display of, e.g., CART or IP CTS captioning to all participants in a video conference? Would the adoption of such a performance objective be consistent with section 716(b)(2), which allows covered service providers to meet their accessibility obligations either natively or by using third party applications or equipment?[166]

54. *Text-to-Speech*. To ensure that IVCS is operable by people with disabilities who need to communicate by text, we propose to amend section 14.21(b)(1)(ix), which specifies that ACS be operable in "at least one mode that does not require user speech,"[167] to read (with proposed new text shown in bold):

> 14.21(b)(1)(ix): *Operable without speech*. Provide at least one mode that does not require user speech. **For interoperable video conferencing services, provide at least text-to-speech functionality.**

We seek comment on this proposal. Would text-to-speech and captions, along with compatibility with refreshable braille displays or other peripheral devices,[168] make IVCS accessible for people who are deafblind and for people with speech disabilities who cannot or do not use Speech-to-Speech relay service (STS)?[169] Should we also specify that IVCS support the use of IP Relay, and would such a specific performance objective be consistent with the flexible compliance approach permitted by section 716(b)(2)?[170] Is there an effective means for users to connect with and use IP Relay in video conferences?

55. *Sign Language Interpreting*. We also propose to adopt, as a performance objective, that IVCS enable the provision of sign language interpreting, such as through a third-party interpreting service

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[163] DAC Video Conferencing Report at 3.

[164] CART "is the instant translation of the spoken word into English text using a stenotype machine, computer, and realtime software." NCRA, The Association for Court Reporters and Captioners, *Captioning Matters*, https://www.ncra.org/captioningmatters (last visited May 16, 2023).

[165] *See* DAC Video Conferencing Report at 6 (recommending that the Commission "ensure at a minimum that video conferencing platforms . . . [f]ully integrate support for TRS CAs, including video audio, captioning, and text communication").

[166] *See* 47 U.S.C. § 617(b)(2) ("A provider of services may satisfy the requirements of paragraph (1) . . . by (A) ensuring that the services that such provider offers are accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or (B) if such provider chooses, using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.").

[167] 47 CFR § 14.21(b)(ix) ("*Operable without speech*. Provide at least one mode that does not require user speech.").

[168] *See* 47 CFR § 14.21(d) (stating that "[t]he term *compatible* shall mean compatible with peripheral devices and specialized customer premises equipment . . .").

[169] STS is a form of TRS "that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person." 47 CFR § 64.601(41). STS is currently provided only through state-certified relay service programs.

[170] *See* DAC Video Conferencing Report at 6 (recommending that the Commission "ensure at a minimum that video conferencing platforms . . . [f]ully integrate support for TRS CAs, including video audio, captioning, and text communication").

or a VRS provider. According to the Disability Advisory Committee, "many video conferencing platforms do not provide sufficient accessibility features to ensure that [interpreters] can be integrated properly in a video conference."[171] Further, at present, video conferencing platforms generally are not configured to allow the connection of VRS CAs to a video conference, except through a voice-only dial-in connection. As the committee explains, the need to connect a VRS CA through a dial-up connection poses multiple difficulties for the user, including the need to use two separately connected devices, splitting attention between the two in a way that appears to fall short of functionally equivalent participation in a video conference.[172] However, some companies are developing ways to enable VRS CAs to have a video presence on a video conferencing platform, enabling a solution to these problems.[173]

56. To provide guidance on how to make video conferencing accessible to people who use sign language, we propose to add a new performance objective to section 14.21 of our rules to specify that accessibility for IVCS includes enabling an effective video connection for sign language interpreters, including VRS CAs, so that they can be pinned and viewed by those who use such services.[174] We seek comment on this proposal and its costs and benefits. We also seek comment on the following language for this proposed performance objective:

> 14.21(b)(4)(i): ***Sign language interpretation.*** **Interoperable video conferencing services shall enable the use of sign language interpretation, including the transmission of user requests for sign language interpretation to providers of video relay service and other entities and the provision of sufficient video quality to support sign language communication.**[175]

To ensure that providers of video remote interpreting (VRI) and VRS can connect with an IVCS provider's platform, should we also specify in this performance objective that IVCS providers make technical specifications available on their websites, indicating how to make use of the relevant capabilities? Are there other forms of visual communication that this rule should cover for use on video conferences? For example, Cued English uses hand shapes, hand placements, and non-manual signals on the mouth to provide a transliteration of spoken English for some individuals with hearing disabilities.[176] How would requiring the ability to connect interpreters or transliterators for additional forms of visual communication (if procured, e.g., by the host or organizer of a video conference) affect the costs and benefits of this proposed rule?

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[171] *Id*. at 3.

[172] *Id*. at 3-4 (noting that the use of two separate devices "introduces significant cognitive load" that can cause confusion, fatigue, or otherwise decrease a user's ability to fully participate in a video conference.)

[173] *See, e.g.*, Letter from John T. Nakahata, Counsel to Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed Mar. 10, 2023) (reporting demonstration of VRS integration with Zoom IVCS). Sorenson has now made available to its customers an application that allows its VRS CAs to participate in a Zoom conference call. *See Sorenson-for-Zoom* (instructions for application to integrate Sorenson VRS CAs on a Zoom conference call).

[174] DAC Video Conferencing Report at 6; *see also* AARO 2021 CVAA Refresh Comments at 14-15 (recommending a similar measure); AARO 2022 IVCS Refresh Comments at 21 (same).

[175] *Cf. Section 508 and 225 Guidelines*, § 412.7; https://www.access-board.gov/ict/#412.7 ("Where ICT provides real-time video functionality, the quality of the video shall be sufficient to support communication using sign language".).

[176] *See* Letter from Nicole Dugan, National Cued Speech Association, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 21-140 and 10-213 (filed June 2, 2023); AARO 2022 IVCS Refresh Comments at 20-21 (urging the Commission to "mandate the inclusion of essential accessibility features . . . including the appearance of cued language transliterators").

57. We also seek comment on whether additional performance objectives should be specified for IVCS to address other accessibility concerns. For example, are the current Part 14 performance objectives sufficient to ensure that people with disabilities other than hearing and speech disabilities can effectively participate in video conferences?

58. *User Interface Controls.* The Disability Advisory Committee and some commenters raise a concern that video conferencing platforms do not provide certain user interface controls needed for accessibility.[177] To address these concerns, the committee recommends that the Commission ensure that such platforms:

> Allow users, including CAs, to control the activation and customize the appearance of captions and video interpreters, including caption activation, size, color, background, layout, and positioning, pinning and multi-pinning, side-by-side views, hiding non-video participants, including ASL interpreters, [Certified Deaf Interpreters], other interpreters, and cued language transliterators, and exercise this control on their own clients without reliance on video conference hosts.

59. Section 14.21(b) of our rules generally requires that the control functions necessary for a user to operate a covered service or product be accessible.[178] We invite comment on the extent to which the existing section 14.21(b) performance objectives already require control functions that would address the committee's recommendation. If not, would adding a performance objective such as the following effectively and appropriately address those concerns?

> 14.21(b)(4)(ii): **Interoperable video conferencing services shall provide user interface control functions that permit users to adjust the display of captions, speakers and signers, and other features for which user interface control is necessary for accessibility.**

Should we identify additional kinds of user interface controls that are necessary for accessibility?[179] We invite commenters to recommend language for performance objectives that would provide appropriate guidance in this area.

60. *Costs and benefits*. We seek comment on the costs and benefits of the above proposals. What benefits would result, and what costs would IVCS providers and other affected entities incur to:

(a) enable captioning of video conferences;
(b) provide text-to-speech capabilities;
(c) enable a video connection for sign language interpreters and VRS CAs;
(d) improve user interface controls; and
(e) address other possible performance objectives discussed above or in responsive comments?

61. How should we quantify such incremental costs? How should we compare those costs

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[177] *See* DAC Video Conferencing Report at 6; *see also* AARO 2021 CVAA Refresh Comments at 14-15 (urging similar measures); AARO 2022 IVCS Refresh Comments at 21 (same).

[178] *See* 47 CFR § 14.21(b)(1) (providing that "control . . . functions shall be locatable, identifiable, and operable" in each mode listed in the subparagraphs of that provision); *see also id.* § 14.21(b)(2) (providing that all "information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cue" shall be accessible); *id.* § 14.21(b)(3) ("The term usable shall mean that individuals with disabilities have access to the full functionality and documentation for the product.").

[179] *See, e.g.*, *Media Bureau Seeks Comment on Closed Captioning Display Settings Proposal*, MB Docket No. 12-108, Public Notice, DA 23-66 (MB Jan. 24, 2023) (seeking comment on proposal that when the Commission is determining whether specific closed captioning settings are readily available, it should consider the following factors: proximity, discoverability, previewability, and consistency and persistence).

with the benefits to IVCS users? Are there cost savings we should consider—such as costs that could be incurred by video conference hosts or participants to provide captioning in the absence of platform-provided captioning? Further, IVCS providers may view accessibility not only as a public obligation, but also as a market opportunity.[180] We seek comment on this view.

62. In addition to describing and (where possible) quantifying the benefits that would result from meeting all the performance objectives proposed above, we invite comment on the extent to which particular performance objectives are "achievable," either at present or in the foreseeable future.[181] We stress that each of the amendments proposed above, if adopted, would remain subject to the general condition that a provider or manufacturer need not meet the objective if it is not achievable to do so. Therefore, we may adopt new or modified performance objectives even if they are not immediately achievable for every provider. However, we can better assess the likely benefits of our proposals if there is evidence as to whether or not a performance objective is likely to be achievable, for at least some covered entities, within the foreseeable future.

63. *Legal Authority*. We believe the Act provides legal authority for the above proposals. Section 716 of the Act requires providers of ACS and manufacturers of equipment used with ACS, including "interoperable video conferencing service," to make their services and equipment accessible to and usable by individuals with disabilities, unless that is not achievable.[182] The Act directs the Commission, in broad terms, to adopt implementing regulations that, among other things, "include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services"[183] and "determine the obligations under this section of manufacturers, service providers, and providers of applications or services accessed over service provider networks."[184] We believe our proposals fall within this broad grant of authority and are consistent with other provisions of section 716, including the allowance for flexible implementation through either native or third-party applications,[185] the prohibition on mandating technical standards,[186] and the condition that compliance is not required if it is not achievable.[187] We seek comment on this analysis.

64. We also seek comment on whether there are other sources of authority supporting the above proposals. For example, in 2007 the Commission found that it had authority, ancillary to section

[180] Ken Krechmer, *The role of technical standards in enabling the future,* The Bridge: 50th Anniversary Issue, National Academy of Engineering (Feb. 22, 2021), https://www.nae.edu/248425/The-Role-of-Technical-Standards-in-Enabling-the-Future.

[181] *See* 47 U.S.C. § 617(a)(1), (b)(1) (requiring that covered equipment and services be accessible to and usable by people with disabilities "unless the requirements of this subsection are not achievable"); *id*. § 617(c) (providing that "whenever the requirements of subsections (a) or (b) are not achievable, a manufacturer or provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless the requirement of this subsection is not achievable"); 47 CFR § 14.20(a)(1), (2), (3) (corresponding provisions of the Commission's rules); *see also id*. § 14.10(b) (defining "achievable" as "with reasonable effort or expense, as determined by the Commission," and listing four factors to be considered in making such a determination).

[182] 47 U.S.C. § 617(a)(1), (b)(1). Further, whenever that requirement is not achievable, a service provider shall ensure that its service "is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access," unless this requirement too is not achievable. *Id*. § 617(c). A manufacturer of equipment used for IVCS is similarly required to make its products accessible to and usable by people with disabilities, unless it is not achievable to do so. *Id*. § 617(a)(1).

[183] *Id*. § 617(e)(1)(A).

[184] *Id*. § 617(e)(1)(C).

[185] *Id*. § 617(a)(2), (b)(2).

[186] *Id*. § 617(e)(1)(D).

[187] *Id*. § 617(a)(1), (b)(1).

225 of the Act, to require interconnected providers of VoIP service to provide access to TRS.[188] Could the Commission also find that it has authority ancillary to section 225, or other provisions, to require video conferencing service providers to provide TRS access to interoperable video conferences? If so, what would be the bases for such a finding?

2. Safe Harbor Technical Standards

65. Section 716 of the Act provides that the Commission shall not adopt mandatory technical standards for ACS accessibility.[189] However, the Commission may adopt technical standards "as a safe harbor for such compliance if necessary to facilitate the manufacturer's and service providers' compliance."[190] We seek comment on whether technical standards are available (or in development)—e.g., WebRTC[191] or portions thereof—that could serve as safe harbors for IVCS compliance with one or more applicable performance objectives, including the additional performance objectives proposed above, whereby a performance objective can be satisfied if an IVCS complies with the technical standard.[192]

66. We invite any commenter who proposes that a technical standard be recognized as a safe harbor to discuss the costs and benefits of the proposal, and how the Commission would verify compliance with the standard. In general, are there costs or benefits to innovation of recognizing certain technical standards as safe harbors? Given the pace of technological innovation, how often should a safe harbor be updated, or should it be designated to expire after a date certain?

67. We also seek comment on how the Commission can assist with or promote the development of safe harbor technical standards in this area. For example, there are numerous IVCS providers, each with a specific technology configuration, and there are multiple VRS providers as well. Would substantial costs be saved if all companies adhered to a common technical standard for integrating interpreters and VRS CAs into video conferences? How could the Commission facilitate the development of a useful standard?

B. Providing TRS in Video Conferences

1. Authorizing the Integrated Provision of TRS in Video Conferences

68. Responding to the Disability Advisory Committee's recommendations, we propose to amend our rules to clarify that the integrated provision of TRS to enable functionally equivalent participation in video conferences can be supported by the Interstate TRS Fund.[193] Just as the TRS Fund

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[188] *See IP-Enabled Services et al.,* WC Docket No. 04-36 et al., Report and Order, 22 FCC Rcd 11275, 11291-97, paras. 32-43 (2007) (*IP-Enabled Services*).

[189] 47 U.S.C. § 617(e)(1)(D).

[190] *Id*.

[191] WebRTC, short for "Web Real-Time Communications," is an open-source internet standard that allows for real-time video communications through a user's internet browser, foregoing the need for plug-ins or standalone third-party software. On January 26, 2021, the World Wide Web Consortium and the Internet Engineering Task Force announced WebRTC as an official standard. Although designed as a tool for internet browsers, WebRTC applications are now also being developed for mobile and Internet of Things devices. *See* Huib Kleinhout, *WebRTC is now a W3C and IETF Standard* (Jan. 26, 2021) https://web.dev/webrtc-standard-announcement/#:~:text=A%20brief%20overview%20of%20the,cases%2C%20and%20future%20of%20WebRTC.&text=The%20process%20of%20defining%20a,consistency%20and%20compatibility%20across%20browsers; W3C/IETF Press Release, https://www.w3.org/2021/01/pressrelease-webrtc-rec.html.en (last visited May 16, 2023).

[192] Section 716(e)(1)(D) of the CVAA provides that the Commission "shall . . . not mandate technical standards, except that the Commission may adopt technical standards as a safe harbor for such compliance if necessary to facilitate the manufacturers' and service providers' compliance" with the accessibility and compatibility requirements in Section 716. 47 U.S.C. § 617(e)(1)(D).

[193] DAC Video Conferencing Report at 5-6.

has long been used to support the provision of TRS with audio-only teleconferencing, we believe it is necessary and appropriate, as a general matter, that the TRS Fund be used to support the provision of TRS with video conferencing.

69. *Legal Authority*. We tentatively conclude that section 225 of the Act authorizes the Commission to support the integrated provision of TRS in video conferences, without any need for either the TRS user or the CA to place a dial-up, voice-only call to the video conferencing platform. By "integrated provision of TRS" in a video conference, we mean an arrangement whereby communication between the CA (or automated equivalent) and video conference participants, whether by voice, text, or sign-language video, takes place on the video conferencing platform (where it can be available to all participants), rather than through a separate dial-up connection. The Act defines telecommunications relay services as:

> *telephone transmission services* that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to *engage in communication by wire or radio* with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.[194]

Applying this definition, we tentatively conclude that when the provision of a relay service is integrated with a video conferencing platform (without using a dial-up, voice-only connection), the provision of such service to an eligible TRS user is a "telephone transmission service" that enables "communication by wire or radio . . . in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio."

70. As indicated by the text quoted above, section 225 defines TRS in terms of its purpose—to enable people with hearing or speech disabilities to "communicat[e] by wire or radio" in a manner that is functionally equivalent to how people without such disabilities use "voice communication services." Both "radio communication" and "wire communication" are broadly defined in the Act as "the transmission . . . of writing, signs, signals, pictures and sounds of all kinds . . . including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission."[195] These definitions include wire or radio communication using Internet Protocol.[196] Further, we believe that interoperable video conferencing service, which is defined to include audio communication, is appropriately characterized as a "voice communication service" for purposes of section 225.

71. While "telephone transmission service" is not defined in the Act, the Commission has given this term a similarly broad interpretation. As the Commission explained in 2002, the use of this phrase to define TRS is "constrained only by the requirement that such service provide a specific functionality," namely the ability to communicate by wire or radio in a manner functionally equivalent to voice communication.[197] In its prior decisions authorizing new forms of TRS, the Commission has found

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[194] 47 U.S.C. § 225(a)(3) (emphasis added); *see also, e.g., 2002 IP Relay Declaratory Ruling*, 17 FCC Rcd at 7783, para. 10 (citing pre-CVAA language of Section 225).

[195] 47 U.S.C. § 153(40), (59).

[196] *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-54, paras. 21-27 (2000) (*2000 TRS Order*) (allowing TRS Fund compensation for VRS); *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 387-90, paras. 19-26.

[197] *2002 IP Relay Declaratory Ruling,* 17 FCC Rcd at 7783, para. 10. Further, section 225 directs the Commission to "ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Act,
(continued….)

that Internet-based relay services are not limited to a specific technical configuration. For example, when finding IP CTS to be a compensable form of TRS, the Commission emphasized that the service could be initiated, set up, and provided in numerous ways, including using specific telephone equipment or IP-enabled devices, and various combinations of the PSTN and IP-enabled networks.[198] Similarly, when the Commission approved compensation for VRS, it noted that the service "is under development using a number of equipment configurations and…[o]ne [VRS] equipment configuration, for example, involves the use of personal computer and videoconferencing equipment along with access to broadband transmission services."[199] Further, the Commission has not interpreted "telephone transmission service" as requiring the use of telephone numbers. For example, VRS users were not assigned NANP numbers until 2008.[200]

72. We seek comment on the foregoing tentative conclusion and interpretation of our authority under section 225. Among other things, we seek comment on whether anything in section 225 or elsewhere in the Act indicates that our authority in this context is limited to making TRS available only with voice services that rely on the use of NANP telephone numbers. How could such a restrictive interpretation be squared with the broad language of the statutory definition of TRS?

73. Below, we seek comment on how to modify the Commission's TRS rules to facilitate such integration, ensure the appropriate use of VRS with video conferencing, and prevent waste, fraud, and abuse. First, we propose and seek comment on measures that specifically address the integration of VRS with video conferencing. Then, we seek comment on whether additional rule amendments are needed to specifically address the integration of other types of TRS with video conferencing. Finally, we propose to amend certain generally applicable TRS rules to address the integrated provision of TRS regardless of type.

2. Integrating the Provision of VRS with Video Conferencing

74. We tentatively conclude that the integrated provision of VRS with video conferencing is often necessary to enable sign-language users to communicate in a functionally equivalent manner.[201] First, the only alternative for connecting a VRS CA to a video conference—using a dial-up, voice-only connection—is often unavailable.[202] Second, the need to connect a VRS CA through a dial-up connection poses multiple difficulties for the user.[203] For example, the VRS user must navigate between two separately connected devices and user interfaces—one to participate in the video portion of the conference and the other to communicate with the VRS CA—and this can cause confusion, fatigue, and

(Continued from previous page)
the use of existing technology and do not discourage or impair the development of improved technology." 47 U.S.C. § 225(d)(2).

[198] *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 388.

[199] *2000 TRS Order*, 15 FCC Rcd at 5152-53.

[200] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Services Providers*, CG Docket No. 03-123 and WC Docket No. 05-196, 23 FCC Rcd 11591, 11594, para. 4 (2008) (prior to assignment of 10-digit telephone numbers, VRS users were assigned a "dynamic" Internet address).

[201] By "integrated provision of VRS" in a video conference, we mean an arrangement whereby a CA is included as a participant in the video conference and all communication between the CA and the participants takes place on the video conferencing platform rather than through a separate connection.

[202] DAC Video Conferencing Report at 2. Assuming the video conferencing platform allows a dial-up connection, it is usually the video conference organizer or host who determines whether a dial-up option is provided. Similarly, the conference organizer or host may or may not hire a sign language interpreter to provide communication assistance for a video conference.

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

other barriers to effective communication.[204] We seek comment on this tentative conclusion.

75. The active development and deployment of technological solutions for the integrated provision of VRS in a video conference[205] has crystallized a number of issues regarding the application of our TRS rules to such integration. Therefore, we propose to amend our rules, as set forth below, to facilitate such integration, ensure the appropriate use of VRS with video conferencing, and prevent waste, fraud, and abuse.

76. In addition, we invite the submission of comments describing in detail any ongoing efforts by VRS providers and IVCS providers to enable the integration of VRS with IVCS, and how far their development has progressed. We seek comment on the extent to which the integration methods and technologies currently being developed or deployed are usable (or can be made usable) with more than one video conferencing platform or more than one VRS provider. What steps can the Commission take to encourage or assist with the development of standardized or open-architecture solutions, so that IVCS providers, TRS providers and the TRS Fund do not needlessly incur duplicative costs to support multiple solutions unique to each video conferencing platform and VRS provider? What changes in the TRS interoperability rule, or other Commission rules, would promote wider availability of effective technical solutions in this area? To the extent that technological solutions are feasible, should we not only *authorize*, but also *require* VRS providers to provide VRS with IVCS on an integrated basis?

3. VRS and Video Conferencing—User Validation and Call Detail

77. To collect compensation from the TRS Fund, a VRS provider must validate that the person using a video connection to place or receive a VRS call is a registered VRS user.[206] Ordinarily, a person's status as an eligible user is verified by means of the NANP telephone number from which or to which a call is placed. By contrast, video conference participants typically enter a video conference via the Internet (e.g., by clicking the link provided by the host of the video conference) without dialing from a line associated with a telephone number.[207] Further, VRS users may connect to a video conference without first contacting their VRS provider. We seek comment on how VRS providers can most efficiently and effectively confirm a video conference participant's eligibility for VRS when the user has not joined the video conference by placing a call from a NANP telephone number.

78. For example, should we amend our rules to specify that, to validate the integrated provision of VRS in a video conference, information may be entered in a video conferencing application by a registered user and transmitted by the IVCS provider to a VRS provider, along with a request to provide a CA? If so, what information should be provided? Would a user's NANP telephone number suffice—even though it is not actually being used to connect with the video conference? Or should we require a log-in ID and password? Should we allow the provision of integrated VRS in video conferences pursuant to an enterprise registration, and if so, would the telephone number associated with an enterprise videophone suffice for validating such use?[208] Are there other methods of validation that we should permit in the video conferencing context?

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[204] *Id.* at 3. In addition, the CA who, unlike other participants, is limited to an audio connection, is unable to read documents or other text that may be displayed, interpret facial expressions, or attend to other visual cues on which video conference participants often rely for effective communication. *See id.*

[205] *See, e.g.*, Sorenson March 2023 Zoom *Ex Parte*; *Sorenson-for-Zoom*.

[206] *See* 47 CFR § 64.615(a)(1), (2).

[207] As discussed earlier, while some video conferencing platforms may allow a participant to connect via a voice-only, dial-up connection, the availability of such a connection for a particular video conference is up to the conference host or organizer.

[208] *See* 47 CFR § 64.611(a)(6) (registration requirements for enterprise videophones).

79. We also seek comment on how our rules should address video conferences that are initiated informally, without an advance invitation, by one person dialing the telephone number, entering an email address, pressing an icon or otherwise contacting one or more other parties using a service such as GoogleMeet or FaceTime. Are there currently available or in development any technologies for integrating a CA with this type of video conference? Do the existing TRS rules and procedures suffice to verify, for these kinds of video conferences, that the caller or called party is a registered VRS user? Would this scenario require any changes to our TRS rules?

80. In addition, the VRS provider will need to be able to collect and provide an appropriate call detail record (CDR) to submit to the TRS Fund administrator. Because our rules may apply differently to video conferences in a number of respects,[209] we propose to require that call detail records submitted by VRS providers identify, as such, video conferences in which VRS is provided on an integrated basis. What other information should we require VRS providers to collect and submit to the TRS Fund administrator to identify, for billing purposes, the integrated provision of VRS in a video conference? What routing information is available for the TRS Fund administrator to verify the presence of the VRS user and the CA or CAs in a video conference? Are originating and terminating URLs needed, and if so, how can they be collected? Alternatively, is it sufficient to provide the user's phone number or log-in, in lieu of the originating URL? How would VRS providers comply with the requirement to employ an automated record keeping system to capture call record data? How would VRS providers and the TRS Fund administrator identify non-compensable international calls? How would VRS providers verify that, based on the parties involved, the provision of TRS in a video conference is eligible for TRS Fund compensation?[210] In addition, we seek comment generally on what measures VRS providers should be required to take to prevent misuse of VRS or waste, fraud, and abuse of the TRS Fund in the context of video conferencing.

4. VRS and Video Conferencing—CA-Related Issues

81. *Multiple VRS Providers*. There may be a number of situations in which more than one VRS CA participates in a video conference. This could occur, for example, if two or more participants send service requests to different providers. We seek comment on whether our TRS rules should apply differently in this respect to a video conference than to a teleconference.[211] Given that any VRS provided on an integrated basis will be available to all participants, are any restrictions warranted on the number of different providers who may provide VRS in a single video conference?

82. *Multiple CAs from a Single VRS Provider*. We also seek comment on whether to amend our rules to authorize a single VRS provider to assign multiple CAs for a video conference in certain circumstances (and to receive additional compensation from the TRS Fund for minutes involving multiple CAs). First, two or more VRS users may each request service from the same VRS provider on the same video conference. In an analogous teleconference where two or more users have connected through VRS, compensation would be paid for multiple calls—with each user's connection through a CA being treated as a separate call. However, in a video conference with integrated VRS, unlike a teleconference, it is possible for all participants to be served by one CA. In such cases, should the TRS Fund support the provision of a separate CA for each user, or, to prevent waste (and potential confusion among video conference participants), should we limit the number of CAs provided, and if so, based on what criteria?

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[209] For example, as discussed in the next section, for certain kinds of video conferencing calls a VRS provider may be compensated for the provision of a team of two CAs simultaneously handling a call.

[210] For example, a video conference involving only VRS users does not require a CA to relay the conversation and so would not be eligible for TRS Fund compensation. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8483, 8487, paras. 10-11 (2019) (*2019 TRS Definition Order*).

[211] In a multi-party teleconference involving at least one hearing user, our rules do not restrict the number of different TRS providers whose services may be used by various parties to the call.

83. Second, in certain kinds of video conferences, it may be desirable for two CAs to participate in the call, working as a team—even if only one participant has requested VRS.[212] Under the current TRS Fund compensation scheme, additional compensation is not paid to support multiple CAs in a teleconference if only one participant has connected through VRS. However, video conferences may often involve dynamic interaction among multiple participants.[213] Should we amend our rules to allow a VRS provider to earn additional compensation for providing more than one CA in certain video conferencing scenarios, and if so, how should those situations be defined? For example, are there professional interpreter guidelines or best practices on which we could rely, that define when multiple ASL interpreters should be present at a meeting?[214] To what extent are guidelines for community interpreting applicable in the VRS context?[215] Are there any situations where the TRS Fund should support *more* than two CAs from a single VRS provider?[216]

84. *Multiple VRS Users*. We propose that, in the ordinary case, if the VRS user who requested service leaves a video conference, or is disconnected, before the session ends, then the billable period has ended and the CA should leave the video conference.[217] We seek comment on this proposal and on what, if any, exceptions should be allowed. For example, if other registered VRS users are participating in the same video conference, who were being assisted by the same CA, should the initial CA be permitted to stay on the video conference for a limited period to ensure continuity of service, and if so, for how long? Are other flexible alternatives available to ensure seamless VRS for other eligible users or ensure a smooth transition between CAs, while minimizing any risk of waste, fraud, or abuse? Are there any other issues that may arise when multiple VRS users and other participants are present in the same IVCS call, and how should they be resolved?[218]

85. *Call Takeover Issues*. VRS CAs generally must stay on a call for a minimum of 10 minutes, after which they may be replaced by another CA.[219] We seek comment on whether to adjust this timeframe for the provision of VRS in video conferences. If so, what timeframe would be reasonable?

86. In addition, to ensure a seamless takeover between CAs from the same VRS provider during a video conference, is it desirable for a replacement CA to join the video conference and observe

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[212] *See, e.g.*, The Registry for Interpreters for the Deaf (RID), *Team Interpreting,* Standard Practice Paper, https://nvrc.org/wp-content/uploads/2011/07/Team_Interpreting_SPP.pdf (last visited May 16, 2023) (*RID Standard Practice Paper*).

[213] According to one ASL interpreting service, a team of two interpreters may be recommended "based on the dynamics of the interactions and number of participants involved. . . . For example: highly interactive meetings, or legal requests, with multiple Deaf participants." LinguabeeLearn, *What is team interpreting and when is a team needed?* (Nov. 5, 2019), https://learn.linguabee.com/what-is-team-interpreting-and-when-is-a-team-needed/.

[214] RID states that factors to be considered in deciding whether to provide team interpreting include: (1) the length and complexity of the assignment; (2) unique needs of the persons being served; (3) physical and emotional dynamics of the setting; and (4) avoidance of repetitive stress injuries for interpreters. *RID Standard Practice Paper*.

[215] For example, length of an assignment may be a less relevant factor for VRS because interpreters can be more efficiently substituted for one another when they do not need to be physically present at a meeting.

[216] We also propose a more generally applicable rule amendment (not limited to the video conferencing context) to address the use of multiple CAs in calls between users of different forms of TRS. *See infra* paras. 108-11.

[217] In the context of an ordinary VRS call or conference call, if the TRS user is voluntarily or involuntarily disconnected from the call, he or she must initiate another call with a new CA.

[218] *See* 47 CFR § 64.604(a)(1)(vi) ("TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.").

[219] *See id*. § 64.604(a)(1)(v). CAs answering and placing an STS call shall stay with the call for a minimum of 20 minutes.

or acquire background information for some period of time before taking over from the first CA? If so, what would be a reasonable transition period? Is there a standard timeframe that VRS providers should adhere to, or should it be left to the discretion of the CAs or the VRS user? Are there professional guidelines or best practices that shed light on this question? Should a VRS provider be compensated for each CA's time while both the initial and replacement CAs are on the call? How can we encourage uninterrupted VRS call takeovers during video conferences, while not unduly burdening the TRS Fund and Fund contributors?

5. VRS and Video Conferencing—Privacy Screen Rule

87. We propose to modify our rules to allow flexibility for VRS users and CAs to turn off video while participating in a video conference. Our current rules prohibit a VRS CA from enabling a visual privacy screen or similar feature during a VRS call and require the CA to disconnect a VRS call if the caller or called party enables a visual privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes.[220] A "visual privacy screen" is defined as "[a] screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call."[221] The Commission adopted this rule in 2011 as one of numerous measures aimed at halting the epidemic of fraud and abuse then plaguing the VRS program. The rule's stated purpose was to stop "illicit schemes that result in calls 'running' without any communication between the parties for the sole purpose of fraudulently billing the Fund."[222]

88. In a multi-party video conference, however, a participant may turn off his or her video camera for various reasons that may not indicate lack of engagement with the discussion. For example, in some video conferences, the host may request that all participants turn off their videos unless speaking, to make it easier for participants who are deaf to view a sign language interpreter.[223] Or, an interpreter may stop his or her video when a second interpreter is present and is interpreting a particular person's voice or signing. Further, on a video conference where one or more participants are speaking at length, participants who are deaf (like other participants) may choose to turn off their videos until it is their turn to speak.

89. We propose to allow VRS CAs to continue providing relay services integrated with a multi-party video conference when the VRS user who requested service has turned off his or her video connection for more than five minutes, as long as at least one other party is continuing to speak and the VRS user is still connected to the video conference. Under our proposed amendment, if five minutes elapse in which no party on a multi-party video conference is responsive or engaged in conversation, the VRS CA shall follow the current procedure, i.e., announce that VRS will be terminated and leave the video conference. We propose to define "multi-party video conference" as a video conference with three or more participants, excluding VRS CAs and any other participant providing an accommodation for a participant. We also propose to allow VRS CAs to turn off their video connections when taking turns relaying conversation with another VRS CA on a multi-party video conference. We seek comment on these proposals. Are there other steps we should take to ensure that modifying this rule does not lead to misuse of TRS or fraudulent billing to the TRS Fund? More generally, are there other precautions we should take to prevent the inappropriate or excessive provision of TRS in video conferences, with the intention of increasing a TRS provider's compensable minutes?

6. Integrating Other Types of TRS with Video Conferencing

90. We seek comment generally on the need to facilitate the integration of non-VRS types of

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[220] *See id*. § 64.604(a)(6).

[221] *Id*. § 64.601(a)(52).

[222] *2011 VRS Call Practices Order,* 26 FCC Rcd at 5567, para. 40.

[223] Sorenson Petition at 4-5.

TRS with video conferencing and on the existence and progress of any efforts to develop technology to enable such integration. To the extent that such integration is needed and feasible, should we adopt service-specific rule changes, e.g., amendments analogous to those proposed above for VRS, to address the integration of other types of TRS with video conferencing? What rule changes would facilitate the integrated provision of each type of TRS with video conferencing, ensure the appropriate use of these TRS Fund-supported services in that context, and prevent waste, fraud, and abuse?

91. *IP Relay*. We seek comment on the extent to which the integrated provision of IP Relay in video conferences would facilitate functionally equivalent communication. Would such integrated provision of IP Relay enhance functionally equivalent communication in video conferences for those segments of the TRS-eligible population served by IP Relay, such as persons who are deafblind and persons with speech disabilities?[224] Have methods and technologies been developed to enable such integrated provision of IP Relay? Could the needs of these communities be served more efficiently or effectively if IVCS providers make available text-to-speech and speech-to-text (captioning) functionality, pursuant to Part 14 of our rules? Alternatively, would IP Relay be needed for certain populations to effectively participate in a video conversation in a way that is functionally equivalent?

92. If the integrated provision of IP Relay with video conferencing is achievable, what service-specific amendments to our rules would facilitate such integration, ensure the appropriate provision of IP Relay in this context, and prevent waste, fraud, and abuse? How can we ensure that only registered IP Relay users can use IP Relay in a video conference? Would the same sign-on procedure and request for a CA work in the context of IP Relay as for VRS? Are there CA-related issues for IP Relay similar to those proposed above for VRS?

93. *IP CTS.* We seek comment on the extent to which the integrated provision of IP CTS in video conferences would facilitate functionally equivalent communication for IP CTS users. Have methods and technologies been developed to enable such integrated provision of IP CTS? We note that IVCS providers are permitted to meet the Part 14 performance objective of providing auditory information in visual form[225] either by implementing a captioning solution on the platform itself or by using third-party solutions available to consumers at nominal cost.[226] Some IVCS providers currently offer captioning. To the extent that technology is developed for integrating IP CTS with video conferencing, are IVCS providers likely to implement such technology, either to comply with Part 14 or to provide an additional captioning option for users? If the integrated provision of IP CTS with video conferencing is achievable, what rule changes would ensure appropriate use of such services in that context, while preventing waste, fraud, and abuse?

94. *Non-Internet-Based TRS.* We seek comment on whether and how the Commission should amend its rules to facilitate the provision in video conferences of non-Internet-based TRS—Text Telephone (TTY)-based TRS, Captioned Telephone Service (CTS), and Speech-to-Speech Relay (STS).[227] These services, offered through state TRS programs, are intended for use on an ordinary

[224] As the Commission has noted, "IP Relay can be enhanced with adaptive technologies such as refreshable Braille displays and screen readers, making it particularly useful for consumers who are deafblind." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Rulemaking of Sprint Corporation,* CG Docket No. 03-123, RM-11820, Report and Order, FCC 22-48, para. 13 (2022). Also, "some people with speech disabilities may prefer to use IP Relay, a text-based service that does not involve any voice communications by registered users, rather than speech-to-speech relay service (STS)." *Id.*

[225] *See* 47 CFR § 14.21(b)(2)(iv).

[226] *See id.* § 14.20(a)(3).

[227] For TTY-based TRS a user calls a relay center and types the number to be called. The CA makes the telephone call and then relays the call between the parties by speaking what a text user types, and typing what a voice telephone user speaks. For STS, a CA (who is specially trained in understanding a variety of speech disorders) repeats what the caller says in a manner that makes the caller's words clear and understandable to the called party. CTS is similar to IP CTS, with captions being provided over the telephone network instead of the Internet.

telephone line. While users of these services may be able to participate in an IVCS call over a dial-up connection (where available), it is unclear whether or how these forms of TRS could be integrated with video conferencing platforms. Further, given the availability of IP CTS and IP Relay, which provide the functionality of CTS and TTY-based TRS for users with Internet access, it seems unlikely that there would be significant demand for integrated provision of these services in Internet-based video conferences. We seek comment on this assumption. STS, however, has no Internet-based equivalent. For STS, would enabling the CA, as well as the user, to participate in the video portion of a video conference permit more effective communication for the STS user? If so, have methods and technologies been developed to enable such integrated provision of STS? What service-specific rule changes would facilitate such provision of STS, ensure appropriate use of STS in that context, and prevent waste, fraud, and abuse?

7. Rules Applicable to All TRS

95. In the paragraphs below, we seek comment on proposed rule amendments that would be applicable both to VRS and to any other form of TRS that is integrated with video conferencing.

96. *Confidentiality*. We propose to amend our TRS confidentiality rule[228] to address the video conferencing context. Specifically, we propose to amend the rule to expressly prohibit CAs from disclosing non-relayed content that is communicated in a video conference, or maintaining records of such content beyond the duration of the video conference. We also propose to amend the confidentiality rule to codify our current practice that the rule expressly applies to TRS providers as well as CAs, so that the rule explicitly covers TRS calls (including but not limited to video conferences) where TRS is provided via automatic speech recognition or other automatic processes, without the involvement of a CA.[229]

97. The rule currently states that "CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and … from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law."[230] Some features of video conferences are not explicitly addressed by this rule. For example, a CA may become aware of "sidebar" conversations between two or more video conference participants (whether in speech or sign language) that the CA concludes are not intended to be communicated to other participants. Or the CA may review "chat" conversation or PowerPoints and other presentation material that the CA is not asked to relay to participants. Therefore, such content would not be included in "relayed conversation."

98. The rule we propose would protect this content from disclosure and would require TRS providers and CAs to destroy any notes or records of such content upon termination of the call.[231] We

[228] 47 CFR § 64.604(a)(2).

[229] *See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 13-24 and 01-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5832, para. 60 (2018) (stating that IP CTS providers relying on ASR, rather than CAs, must adhere to TRS confidentiality rule); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568, 4572, para. 8 (CGB 2020) (stating that ASR-only IP CTS provider must maintain confidentiality of calls).

[230] 47 CFR § 64.604(a)(2)(i). There is a limited exception for Speech-to-Speech CAs: "STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls." *Id.*

[231] For example, if a CA keeps notes during a call of, e.g., party names, specialized vocabulary, such notes must be destroyed at the end of the call.

seek comment on this proposal. Are additional amendments to our confidentiality rule necessary to protect the privacy of participants? For example, should we also restrict CAs from disclosing the identities or other personal information regarding the participants in a video conference? Should any of the proposed restrictions on non-relayed content be applicable to other types of calls?

99. *Exclusivity Contracts.* Consistent with the DAC's recommendation,[232] we propose to prohibit exclusivity arrangements between TRS providers and IVCS providers. In general, an exclusivity arrangement is an express or implied agreement between a TRS provider and an IVCS provider that has the purpose or effect of preventing other providers from offering similar services to consumers.[233] Such exclusivity arrangements may deprive consumers of the opportunity to rely on their chosen provider when using video conferencing services, contrary to the Commission's policy.[234] Similarly, such exclusivity arrangements also may deprive conference hosts of the opportunity to select their preferred IVCS provider. What are the costs and benefits of exclusivity arrangements between TRS providers and IVCS providers? What types of arrangements should we prohibit as *de facto* exclusivity agreements? Are there any arrangements of this kind that should be allowed, e.g., because they would provide net economic benefits in this context? Should we also prohibit exclusivity arrangements between TRS providers and manufacturers or suppliers of video conferencing equipment or software? Should the Commission require that all contracts between TRS providers and IVCS service providers (or suppliers of video conferencing equipment or software) be available for inspection?

100. *TRS vs. Other Accessibility Measures*. We note that video conferencing can function as a substitute for in-person meetings as well as teleconferences. Historically, the Commission has prohibited the use of TRS for in-person meetings.[235] Further, many employers, educational institutions, health care providers, government agencies, and other entities currently provide ASL interpreting, captioning and other accommodations—either voluntarily or to fulfill obligations under the Americans with Disabilities Act or other laws[236]—to ensure that persons with hearing and speech disabilities can fully participate in meetings, classes, and other activities. In these contexts, dedicated ASL interpreters, captioners, and others may be trained and gain experience in a specific subject matter and may have the opportunity to prepare in advance for a scheduled meeting or class. We seek comment on the extent to which such accommodations, as well as accessibility features that may be available on a video conferencing platform,[237] may be more effective than TRS in making video conferences accessible.[238] Would the

[232] DAC Video Conferencing Report at 5.

[233] *See, e.g.*, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007) (banning exclusive service contracts between cable operators and MDUs).

[234] *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, 32 FCC Rcd 5891, 5908-10, paras. 34-36 (2017) (*2017 VRS Compensation Order*), *aff'd sub nom. Sorenson Communications, LLC v. FCC*, 897 F.3d 214 (2018); *2013 VRS Reform Order*, 28 FCC Rcd at 8699, para. 200.

[235] *See Federal Communications Commission Clarifies That Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices Are Improper and Reminds That Video Relay Service (VRS) May Not Be Used as a Video Remote Interpreting Service,* Public Notice, 20 FCC Rcd 1471, 1474 (2005) (stating that, as a service providing access to the telephone network, VRS may not be used to interpret for two persons in the same location) (*2005 TRS Practices Public Notice*); *2019 TRS Definition Order*, 34 FCC Rcd at 8487, paras. 10-11 (explaining when the use of two TRS CAs on a call is compensable).

[236] *See, e.g.*, 42 U.S.C. § 12112(b)(5) (nondiscrimination in employment).

[237] *See supra* Part IV.A.

[238] *See* 28 CFR §§ 35.160(b)(2), 36.303(c)(ii) ("The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.").

universal availability of TRS in video conferences reduce the incentives of video conference organizers and hosts to provide more effective forms of accessibility? For example, is there a risk that the availability of integrated VRS in a video conference will dissuade organizers or hosts from voluntarily offering more effective ASL interpreting services, and if so, what steps should the Commission take to mitigate that risk? More generally, how can the Commission ensure that the use of TRS in video conferences does not detract from the effective implementation of ADA and other legal requirements?

101. Further, as stewards of the TRS Fund, we have an obligation to prevent waste and ensure that TRS is available in the most efficient manner.[239] When a non-TRS accessibility solution has been made available by a video conference organizer or an IVCS provider, are there steps the Commission should take to prevent unnecessary and potentially confusing provision of a redundant TRS solution? For example, if a video conference organizer employs or contracts for an ASL interpreting or captioning service, whether in fulfillment of legal obligations or voluntarily, should TRS Fund compensation be denied for the integrated provision of VRS in that video conference? How would such a restriction be effectuated as a practical matter? For instance, should we require a VRS provider that offers integrated VRS to ensure that when VRS is requested for a video conference, the organizer or host is prompted to confirm whether or not ASL interpretation is being separately provided? To limit unnecessary requests for VRS, should we require IVCS providers to make available a symbol that call organizers can activate in a call invitation or notice to indicate that ASL interpreters will be supplied on the call?

102. As a related matter, we tentatively conclude that TRS providers must decline requests to reserve a TRS CA in advance of a scheduled video conference. The provision of ASL interpreting, captioning, and other assistance by prior reservation is a different kind of service, which is available from other sources, such as VRI services. The Commission has long held that the role of TRS is to be available for calls consumers choose to make, when they choose to make them, i.e., to be the "dial tone" for a call that requires assistance for effective communication.[240] For this reason, the Commission requires TRS providers to handle service requests in the order in which they are received, in accordance with "speed-of-answer" standards.[241] As a consequence, the Commission has found that the practice of permitting TRS users to reserve in advance a time at which a CA will handle a call is inconsistent with the nature of TRS and the functional equivalency mandate.[242] Allowing TRS CAs to be reserved in advance for certain kinds of calls, such as video conferences, would raise the risk that service to other users would be degraded. We seek comment on this tentative conclusion.

8. Costs and Benefits

103. We seek comment on the costs and benefits of each of the proposed rule amendments and other possible changes discussed above, including:

(a) Authorizing the integrated provision of VRS and other types of TRS with video conferences;
(b) Specifying modified methods of VRS user validation and call detail recording for video conferences;
(c) Addressing the use of multiple VRS CAs, service to multiple VRS users, and call takeover in video conferences;

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[239] 47 U.S.C. § 225(b)(1).

[240] *See 2000 TRS Order*, 15 FCC Rcd at 5165-66; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20176, para. 96 (2007); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466, 1469, para. 8 (CGB 2005).

[241] *See 2000 TRS Order*, 15 FCC Rcd at 5165-66, paras. 60-63; 47 CFR § 64.604(b)(2).

[242] *2005 TRS Practices Public Notice*, 20 FCC Rcd 1471.

(d) Changes to the privacy screen rule;
(e) Changes to our TRS confidentiality rules;
(f) Prohibiting exclusivity agreements between TRS providers and IVCS providers, equipment manufacturers, and software suppliers; and
(g) Preventing disincentives for and duplication of the provision of accommodations by video conference organizers and providers.

104. We also seek comment on the specific costs that providers of each type of TRS (as opposed to IVCS providers and other parties) would incur to provide service in video conferences on an integrated basis. For example, we seek estimates of the research and development costs incurred by TRS providers to develop, and engineering costs to build, test, maintain, and update, those aspects of integration solutions in which a TRS provider is involved. We also seek estimates of the costs TRS providers would incur to adapt their TRS operations (for example, by adjusting call routing protocols) to the integrated provision of TRS in video conferences, in accordance with our proposed rules. To what extent could there be offsetting cost savings? We also request that interested parties identify which costs would be appropriately identified as start-up or one-time costs, and which costs would be recurring.

105. How is demand for VRS and other forms of TRS likely to change as a result of integrating TRS with video conferencing? What is the projected impact of such increased use on costs and revenues for TRS providers? To what extent could increases in TRS minutes of use due to integration of TRS with video conferencing off-set increased costs to provide such service?

106. *TRS Fund Compensation*. In general, we anticipate that allowable costs incurred by TRS providers to provide service that is integrated with video conferencing will be recovered pursuant to the Commission's current processes. That is, such costs will be reported annually by providers along with other allowable costs[243] and will be recovered pursuant to compensation formulas determined in the relevant compensation proceedings for each form of TRS.[244] However, we seek comment on any changes in cost categories that may be needed to reflect the costs of integration with IVCS platforms. Will the provision of TRS on video conferencing platforms require changes to the forms on which TRS providers annually report cost and demand to the TRS Fund administrator? Are additional limits on allowable costs needed to protect against waste, fraud, and abuse in the TRS program?

107. At least one VRS provider indicates it is already able to provide VRS with one IVCS provider on an integrated basis.[245] Absent a mandate, any additional costs incurred by VRS providers to provide such service, if significantly higher than costs reported to the Administrator and reflected in applicable compensation formulas, would not be recoverable under our current guidelines for exogenous cost recovery.[246] To encourage VRS providers to develop methods and technologies for providing VRS integrated with video conferencing, should the Commission provide a mechanism for additional cost recovery from the TRS Fund?

C. Amendment of the Commission's Rule on Multiple CAs

108. Section 64.604(c)(14) of the Commission's rules authorizes additional TRS Fund compensation for the involvement of multiple CAs in handling specified types of calls between two or more TRS users.[247] We propose to amend this provision to state generally that compensation may be paid

[243] *See* 47 CFR § 64.604(c)(5)(iii)(D)(*1*) (describing annual cost data to be provided to TRS Fund administrator).

[244] *See*, *e.g., 2017 VRS Compensation Order*, 32 FCC Rcd 5891.

[245] *See, e.g.*, Sorenson March 2023 Zoom *Ex Parte*; *Sorenson-for-Zoom*.

[246] For example, one of the criteria for recovery of exogenous costs for VRS and IP CTS provides that the additional costs must result from new TRS service *requirements* or other causes beyond the provider's control. *2017 VRS Compensation Order*, 32 FCC Rcd at 5925, para. 66 (addressing exogenous cost recovery for VRS); *2020 IP CTS Order*, 35 FCC Rcd at 10886, para. 39 (addressing exogenous cost recovery for IP CTS).

[247] 47 CFR § 64.604(c)(14).

for the use of multiple CAs to handle TRS calls between users of different types of TRS where more than one CA is needed to handle the call.

109. Adopted in 2014, section 64.604(c)(14) currently states that compensation is authorized for the provision of multiple CAs to handle TRS calls between two or more users of captioned telephone service—CTS or IP CTS[248]—and for calls between a captioned telephone service user and a user of TTY-based TRS or VRS.[249]

110. The Commission adopted this provision in 2014 to codify certain existing practices brought to its attention, whereby compensation was paid for the use of multiple CAs to handle certain types of calls.[250] Subsequently, the Commission amended the definition of "telecommunications relay service" to reflect the statutory definition of that term as amended by the CVAA.[251] The amended definition provides that TRS enables functionally equivalent communication between "an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability" and "one or more individuals."[252] In proposing this amendment, the Commission explained that the revised definition "will allow compensation from the TRS Fund for relay calls involving two or more persons using different forms of relay services, including calls whose handling may require more than one CA."[253] However, in adopting the amended definition of TRS, the Commission did not modify the multiple-CA rule to reflect its stated intent regarding compensation for calls handled by multiple CAs. As a result, some categories of calls that qualify as TRS under the amended statutory definition and that may warrant multiple CAs, are not currently addressed by the multiple-CA rule.[254]

111. We propose to amend the multiple-CA rule to broaden its scope, to more fully reflect the Commission's stated intent in adopting the amended definition of TRS. Under the proposed amendment, the rule would state that compensation may be paid for more than one CA to handle, among other categories, "[c]alls between users of different types of relay services where more than one CA is warranted."[255] We seek comment on this proposal.

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[248] *Id.* § 64.604(c)(14)(i).

[249] *Id.* § 64.604(c)(14)(ii), (iii).

[250] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards*, CG Docket No. 03-123, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10718-19, para. 49 & n.189 (2014) (*Multiple Relay Calls Order* or *TRS Definition Further Notice*).

[251] *See 2019 TRS Definition Order*, 34 FCC Rcd at 8487, para. 10.

[252] 47 CFR § 64.601(a)(43); *see also* 47 U.S.C. § 225(a)(3); CVAA, § 103(a). Before enactment of the CVAA, TRS was defined as enabling functionally equivalent communication between "an individual who has a hearing impairment or speech impairment" and "an individual who does *not* have a hearing impairment or speech impairment." 47 U.S.C. § 225(a)(3) (2009) (emphasis added).

[253] *TRS Definition Further Notice*, 29 FCC Rcd at 10725, para. 65; *see also id*. at 10725, para. 64 (citing the legislative history of the CVAA); *TRS Definition Order*, 34 FCC Rcd at 8487, para. 10 (explaining that by revising the definition of TRS, the Commission "formally confirm[s] what our program administration already recognizes in practice—that in some instances, achieving communication between two individuals who have speech or hearing disabilities requires more than one type of relay service").

[254] For example, the current rule does not address when the use of two CAs is appropriate for calls between users of IP Relay and other forms of TRS.

[255] Section 64.604(c)(14)(i) remains necessary to allow compensation for calls between users of the same captioning service. *See Multiple Relay Calls Order*, 29 FCC Rcd at 10718-19, para. 49.

D. Advancing Diversity, Equity, Inclusion, and Accessibility

112. The Commission, as part of its continuing effort to advance digital equity for all,[256] 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[257] 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.

V. ORDER

113. In this Order, we grant to all certified VRS providers a limited, partial waiver of the privacy screen rule[258] to allow VRS users and CAs to turn off their videos during a video conference, subject to the conditions described below. Pending Commission action on the proposals in this Notice, grant of this waiver will allow VRS providers flexibility to begin providing VRS integrated with video conferencing service without unduly disrupting current video conferencing practices.

114. The privacy screen rule prohibits a VRS CA from enabling a visual privacy screen or similar feature during a VRS call and requires the CA to disconnect a VRS call if the caller or called party enables a visual privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes.[259] A "visual privacy screen" is defined as "[a] screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call."[260]

115. *Waiver Standard*. A Commission rule may be waived for "good cause shown."[261] In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[262] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[263] Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[264]

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[256] 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.

[257] 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).

[258] 47 CFR § 64.604(a)(6).

[259] *Id.*

[260] *Id.* § 64.601(a)(52).

[261] *Id.* § 1.3.

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

[263] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

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

116. As Sorenson explains, in a video conference, a participant may turn off his or her video camera for various reasons that may not indicate lack of engagement with the discussion—e.g., if the host requests that all participants turn off their videos unless speaking, to make it easier for participants who are deaf to view a sign language interpreter.[265] Or, an interpreter may stop his or her video when a second interpreter is present and is interpreting a particular person's voice or signing. We agree with Sorenson that granting this limited waiver would "allow VRS users to use interactive video conferencing services without their video being activated beyond the current five-minute limitation, so that they can continue to receive VRS interpretation services for the duration of the interactive video conference, in the same manner as hearing users."[266]

117. We find good cause for granting this waiver, pending action on our proposed amendment of the privacy rule, to expedite the provision of integrated VRS in video conferences, so that VRS users can make full use of this increasing essential mode of communication "in a manner that is functionally equivalent to the ability of [a person without hearing or speech disabilities] to communicate using voice communication services."[267] As discussed above, video conferencing has become an essential means of communication for many Americans, and the record indicates that the integrated provision of VRS in video conferences is often necessary to enable sign-language users to communicate in a functionally equivalent manner.[268] Absent a waiver, the privacy screen rule would substantially restrict the ability of VRS providers to explore promising technologies for the provision of such integrated VRS.

118. This waiver, which applies to all certified VRS providers, shall terminate one year from the date of this Order, or on the effective date of Commission amendments to section 64.604(a)(6), whichever is earlier. The scope of the waiver is limited to "multi-party video conferences," i.e., video conferences involving three or more participants, not including persons providing TRS or other accessibility services.

119. To ensure that the TRS Fund administrator is able to effectively review the provision of integrated VRS in video conferences pursuant to this waiver, we require, as a condition of this limited waiver of section 64.604(a)(6), that a provider identify in its monthly compensation requests every video conference call in which VRS is provided on an integrated basis. Further, a provider shall provide the TRS Fund administrator with all information reasonably requested to determine TRS Fund payments and the compensability of such video conference calls.[269] In addition, given that IVCS-VRS integration solutions are still under development, we believe that consumers should be made aware of any limitations of such applications and should be able to contact the VRS provider immediately if the expected connection fails. Therefore, as an additional condition on grant of this waiver, we require each VRS provider to prominently display a notice to its VRS consumers connecting to video conferencing services with this application stating that:

- This application for connecting to video conferencing services is in development and its features and functions may change as development continues;
- At this time, this application allows connections with only [name applicable IVCS

[265] Sorenson Petition at 4-5.

[266] *See id.* at 9.

[267] 47 U.S.C. § 225(a)(3).

[268] As discussed above, this is because the only current alternative for connecting a VRS CA to a video conference—using a dial-up, voice-only connection—is often unavailable, and such connections pose multiple difficulties for VRS users. *See supra* para. 74.

[269] *See* 47 CFR § 64.604(c)(5)(iii)(D)(*1*) ("TRS providers seeking compensation from the TRS Fund shall provide the administrator with true and adequate data . . . reasonably requested to determine the TRS Fund revenue requirements and payments."); *see also supra* Part IV.B.3 (seeking comment on the type of call detail needed to support requests for compensation for the provision of VRS integrated with video conferences).

providers] and not to all video conferencing services; and,

- Consumers should contact a [name of VRS provider] representative at EMAIL/NUMBER if they cannot connect to a [name applicable IVCS provider] video conference with the application or if the application fails during a [name applicable IVCS provider] video conference after an initial connection.

This notice shall remain in place until termination of this waiver.

VI. PROCEDURAL MATTERS

120. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[270] 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.[271] 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 *Notice of Proposed Rulemaking (Notice)*, and accordingly, has prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

121. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order, Notice of Proposed Rulemaking, and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).[272]

122. *Paperwork Reduction Act Analysis.* The *Report and Order* does not contain new or modified or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA).[273] Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.[274]

123. *Initial Paperwork Reduction Act of 1995 Analysis*. The Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the PRA.[275] If the Commission adopts any new or modified information collection requirements, they 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 are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[276] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[277]

124. *Comments*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested

[270] The RFA, 5 U.S.C. §§ 601-602, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[271] 5 U.S.C. §§ 603, 605(b).

[272] *Id*. § 801(a)(1)(A).

[273] Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520 (2016).

[274] 44 U.S.C. § 3506(c)(4).

[275] Public Law 104-13.

[276] Public Law 107-198.

[277] 44 U.S.C. § 3506(c)(4).

parties may file comments on or before the dates indicated on the first page of this document.[278] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[279]

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

Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.[280]

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

125. *Ex Parte Rules*. The proceeding the Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[281] 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

[278] 47 CFR §§ 1.415, 1.419.

[279] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

[280] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closesheadquarters-open-window-and-changes-hand-delivery-policy.

[281] 47 CFR § 1.1200 *et seq.*

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). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

126. *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.

127. *Availability of Documents*. Comments, reply comments, and ex parte submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these 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, DC 20554.

128. *Additional Information*. For additional information on this proceeding, contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716, or William.Wallace@fcc.gov.

VII. ORDERING CLAUSES

129. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 3, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 617, the foregoing Report and Order IS ADOPTED.

130. IT IS FURTHER ORDERED that the Report and Order SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register.

131. IT IS FURTHER ORDERED that the date for complying with the Report and Order SHALL BE one year and 30 days after publication of a summary in the Federal Register. The Consumer and Governmental Affairs Bureau shall announce the compliance date by subsequent Public Notice.

132. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance and Program Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

133. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 3, (4)(i), (4)(j), 225, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154(i), 154(j), 225, and 617, the foregoing Notice of Proposed Rulemaking IS ADOPTED.

134. 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 Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and reply comments on or before 60 days after publication in the Federal Register.

135. IT IS FURTHER ORDERED that Sorenson's Petition for Limited Waiver of the Privacy Screen Rule is GRANTED to the extent specified herein.

136. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), and 225, the foregoing ORDER IS ADOPTED.

137. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, and section 1.3 of the Commission's Rules, 47 CFR § 1.3, the

restrictions on use of privacy screens with Video Relay Service in section 64.604(a)(6) of the Commission's rules, 47 CFR § 64.604(a)(6), are TEMPORARILY WAIVED to the extent set forth in the Order, for one year or until the effective date of Commission action amending this provision, whichever is earlier.

138. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b) and 1.103(a), the ORDER SHALL BE EFFECTIVE upon release.

139. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order, Notice of Proposed Rulemaking, and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

The complete record in this proceeding is available in the Commission's Electronic Comment Filing System located at https://www.fcc.gov/ecfs/.

Commenters on the 2011 IVCS Further Notice

Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (*2011 IVCS Further Notice*)

Comments

Abbreviation	Commenter
ACB	American Council of the Blind
APTS	Association of Public Television Stations
AT&T	AT&T Services, Inc.
ATIS	Alliance for Telecommunications Industry Solutions
CEA	Consumer Electronics Association
	Citrix Online
CSDVRS	CSDVRS, LLC
CTA	Consumer Electronics Association
Consumer Groups	Telecommunications for the Deaf and Hard of Hearing, Inc., et al
DirecTV	DirecTV and DISH Network, LLC
ESA	Entertainment Software Association
	Harry Brown
	Larry Goldberg
	Net Coalition
ITI	Information Technology Industry Council
	Jonathan Eckrich
Michigan PSC	Michigan Public Service Corporation
	Microsoft Corporation
Motorola	Motorola Solutions, Inc.
NAB	National Association of Broadcasters
NCTA	National Cable and Telecommunications Association
RERC-IT/RERC-TA	Rehabilitation Engineering Research Centers on Universal Interface & Information Technology Access (RERC-IT) and Telecommunications Access (RERC-TA)
TDI	Telecommunications for the Deaf and Hard of Hearing, Inc.

	Tech America
TIA	Telecommunications Industry Association
Time Warner	Time Warner Cable, Inc.
T-Mobile	T-Mobile USA
	Verizon
	Verizon Wireless
	Voice on the Net Coalition
	The Walt Disney Company
Words+	Words+, Inc. and Compusult Systems, Inc.

Reply Comments

Abbreviation	Commenter
AAPD	American Association of People with Disabilities
ACA	American Cable Association
ACB	American Council of the Blind
AFB	American Federation for the Blind
AT&T	AT&T Services, Inc.
CEA	Consumer Electronics Association
CTIA	CTIA – The Wireless Association
	Cristina Hartmann
ESA	Entertainment Software Association
Hamilton Relay	Hamilton Relay, Inc. and Purple Communications, Inc.
	Gillian Green
	Microsoft Corporation
NAB	National Association of Broadcasters
NCTA	National Cable and Telecommunications Association
Nintendo	Nintendo of America, Inc.
RERC-TA	Rehabilitation Engineering Research Center on Telecommunications Access
Sprint	Sprint Nextel Corporation
TDI	Telecommunications for the Deaf and Hard of Hearing, Inc., et al
T-Mobile	T-Mobile USA
	Verizon
	Verizon Wireless

Commenters on the 2021 CVAA Refresh Public Notice

Consumer and Governmental Affairs, Media, And Wireless Telecommunications Bureaus Seek Update On Commission's Fulfillment of The Twenty-First Century Communications and Video Accessibility Act, GN Docket No. 21-140, Public Notice, 36 FCC Rcd 7108 (2021) (*2021 CVAA Refresh Public Notice*)

Comments

Abbreviation	Commenter
AAI	Alliance for Automotive Innovation
AARO	Accessibility Advocacy and Research Organizations (AARO): Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), American Association of the DeafBlind (AADB), American Deafness and Rehabilitation Association (ADARA), Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Communications Service for the Deaf (CSD), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cuesign, Inc., Deaf Seniors of America (DSA), Hearing Loss Association of America (HLAA), HEARD, National Association of the Deaf (NAD), National Black Deaf Advocates (NBD), National Cued Speech Association (NCSA), National Hispanic Latino Association of the Deaf (NHLAD), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Registry of Interpreters for the Deaf (RID), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC), Rehabilitation Engineering Research Center for Wireless Inclusive Technologies, Georgia Institute of Technology (Wireless RERC), and RIT/NTID Center on Access Technology (CAT)
ACA Connects	America's Communications Association
ACB	American Council of the Blind
AFB	American Federation for the Blind
CTA	Consumer Technology Association
CTIA	CTIA – The Wireless Association
ITI	Information Technology Industry Council
NAB	National Association of Broadcasters
NCTA	NCTA – Internet & Television Association
NFB	National Federation of the Blind

Reply Comments

Abbreviation	Commenter
AARO	Accessibility Advocacy and Research Organizations (AARO): Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), American Association of the DeafBlind (AADB), American Deafness and Rehabilitation Association (ADARA), Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing

	(CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Communications Service for the Deaf (CSD), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cuesign, Inc., Deaf Seniors of America (DSA), Hearing Loss Association of America (HLAA), HEARD, National Association of the Deaf (NAD), National Black Deaf Advocates (NBD), National Cued Speech Association (NCSA), National Hispanic Latino Association of the Deaf (NHLAD), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Registry of Interpreters for the Deaf (RID), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC), Rehabilitation Engineering Research Center for Wireless Inclusive Technologies, Georgia Institute of Technology (Wireless RERC), and RIT/NTID Center on Access Technology (CAT)
ACA Connects	America's Communications Association
CTA	Consumer Technology Association
NAB	National Association of Broadcasters
Sorenson	Sorenson Communications, LLC
Wireless RERC	Rehabilitation Engineering Research Center for Wireless Inclusive Technologies
Zoom	Zoom Video Communications, Inc.

Commenters on the 2022 IVCS Refresh Public Notice

Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Interoperable Video Conferencing Services, CG Docket No. 10-213, DA 22-463 (Apr. 27, 2022) (*2022 IVCS Refresh Public Notice*)

Comments

Abbreviation	Commenter
AARO	Accessibility Advocacy and Research Organizations (AARO): Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), American Association of the DeafBlind (AADB), American Deafness and Rehabilitation Association (ADARA), Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Communications Service for the Deaf (CSD), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cuesign, Inc., Deaf Seniors of America (DSA), Hearing Loss Association of America (HLAA), HEARD, National Association of the Deaf (NAD), National Black Deaf Advocates (NBD), National Cued Speech Association (NCSA), National Hispanic Latino Association of the Deaf (NHLAD), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Registry of Interpreters for the Deaf (RID), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC), Rehabilitation Engineering Research Center for Wireless Inclusive Technologies, Georgia Institute of

	Technology (Wireless RERC), and RIT/NTID Center on Access Technology (CAT)
ACB	American Council of the Blind
AFB	American Federation for the Blind
ClearCaptions	ClearCaptions, LLC
CTA	Consumer Technology Association
CTIA	CTIA – The Wireless Association
PPI	Prison Policy Initiative

Reply Comments

Abbreviation	Commenter
AARO	Accessibility Advocacy and Research Organizations (AARO): Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), American Association of the DeafBlind (AADB), American Deafness and Rehabilitation Association (ADARA), Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Communications Service for the Deaf (CSD), Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Cuesign, Inc., Deaf Seniors of America (DSA), Hearing Loss Association of America (HLAA), HEARD, National Association of the Deaf (NAD), National Black Deaf Advocates (NBD), National Cued Speech Association (NCSA), National Hispanic Latino Association of the Deaf (NHLAD), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Registry of Interpreters for the Deaf (RID), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC), Rehabilitation Engineering Research Center for Wireless Inclusive Technologies, Georgia Institute of Technology (Wireless RERC), and RIT/NTID Center on Access Technology (CAT)
ACB	American Council of the Blind
AFB	American Federation for the Blind
CTA	Consumer Technology Association
CTIA	CTIA – The Wireless Association
	Richard Lorenzo Ray
Sorenson	Sorenson Communications, LLC
ZP Better Together	ZP Better Together, LLC

Commenters on Accessibility of Communications Technologies (2022 CVAA Biennial Report)

Consumer and Governmental Affairs Bureau Seeks Comment on the Accessibility of Communications Technologies for the 2022 Biennial Report Required by the Twenty-First Century Communications and Video Accessibility Act, CG Docket No. 10-213, Public Notice, DA 22-160 (CGB Feb. 16, 2022) (*Assessment Public Notice*)

Abbreviation	Commenter
ACB	American Council of the Blind
AFB	American Foundation for the Blind
CACP	Center for Advanced Communications Policy
CTA	Consumer Technology Association
CTIA	CTIA - The Wireless Association
DHH CAO	Comments by Deaf and Hard of Hearing Consumer Advocacy Organizations were filed on behalf of Telecommunications for the Deaf and Hard of Hearing, Inc., American Association of the DeafBlind, Association of Late-Deafened Adults, Center on Access Technology, Communication Service for the Deaf, Conference of Educational Administrators of Schools and Programs for the Deaf, Deaf Seniors of America, Hearing Loss Association of America, National Association of the Deaf, Northern Virginia Resource Center of Deaf and Hard of Hearing Persons, Registry of Interpreters for the Deaf, and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing.
HBDE	Hawaii Broadband & Digital Equity Office et al.

Commenters on the Tentative Findings for the 2022 CVAA Biennial Report to Congress

Consumer and Governmental Affairs Bureau Seeks Comment on Tentative Findings for the 2022 Twenty-First Century Communications and Video Accessibility Act Biennial Report, CG Docket No. 10-213, Public Notice, DA 22-661 (CGB June 22, 2022) (*Tentative Findings Public Notice*)

Abbreviation	Commenter
CACP	Center for Advanced Communications Policy
CTA	Consumer Technology Association
NFB	National Federation of the Blind

Commenters on the Sorenson Waiver Petition

Consumer and Governmental Affairs Bureau Seeks Comment On Sorenson Communications, LLC's Petition for a Limited Waiver of the Privacy Screen Rule for Video Relay Service, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 23-28 (CGB Jan. 12, 2023)

Abbreviation	Commenter
AARO	Accessibility Advocacy and Research Organizations (AARO): Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Communication Service for the Deaf (CSD); Hearing Loss Association of America (HLAA); National Association of the Deaf (NAD); Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC)

APPENDIX B

Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR parts 14 and 64 as follows:

PART 14 – ACCESS TO ADVANCED COMMUNICATION SERVICES AND EQUIPMENT BY PERSONS WITH DISABILITIES

1. The authority citation for part 14 continues to read as follows:

Authority: 47 U.S.C. 151–154, 255, 303, 403, 503, 617, 618, 619 unless otherwise noted.

2. Amend § 14.21 by revising paragraphs (b)(1)(ix) and (b)(2)(iv) and adding paragraph (b)(4) to read as follows:

§ 14.21 Performance Objectives.

* * * * *

(b) * * *

(1) * * *

(ix) *Operable without speech*. Provide at least one mode that does not require user speech. For interoperable video conferencing services, provide at least text-to-speech capability.

* * * * *

(2) * * *

(iv) *Availability of auditory information.* Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form. For interoperable video conferencing services, provide at least one mode with captions that are accurate and synchronous. The accuracy and latency of such captions should be comparable to that provided on TRS Fund-supported captioned telephone services.

* * * * *

(4) *Interoperable Video Conferencing Service.*

(i) *Sign language interpretation.* Interoperable video conferencing services shall enable the use of sign language interpretation, including the transmission of user requests for sign language interpretation to providers of video relay service and other entities and the provision of sufficient video quality to support sign language communication.

(ii) *User interface.* Interoperable video conferencing services shall provide user interface control functions that permit users to adjust the display of captions, speakers and signers, and other features for which user interface control is necessary for accessibility.

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

4. The authority citation for subpart F continues to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

5. Amend § 64.601(a) by:

   a. Redesignating paragraphs (a)(21) through (24) as paragraphs (a)(22) through (25), and adding new paragraph (a)(21);

   b. Redesignating paragraphs (a)(25) and (26) as paragraphs (a)(27) and (28), and adding new paragraph (a)(26);

   c. Redesignating paragraphs (a)(27) through (50) as paragraphs (a)(30) through (53), and adding new paragraph (29); and

   d. Redesignating paragraphs (a)(51) through (55) as paragraphs (a)(55) through (59); and adding new paragraph (a)(54).

The additions read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(21) *Integrated VRS*. The provision of VRS in a video conference whereby the CA is included as a participant in the video conference and communication between the CA and the participants takes place on the video conferencing platform rather than through a separate connection.

* * * * *

(26) *Interoperable video conference service (IVCS)*. Has the meaning defined in part 14 of this chapter.

* * * * *

(29) *Multi-party video conference*. A video conference call with three or more participants, excluding VRS CAs and any other participant providing an accommodation for a participant.

* * * * *

(54) *Video conference*. A session of IVCS involving two-way real-time communication between two or more IVCS users.

* * * * *

6. Amend § 64.604 by:

   a. Revising paragraphs (a)(2)(i) and (a)(6);

   b. Adding paragraph (c)(5)(iii)(D)(*2*)(*xi*);

   c. Revising paragraphs (c)(5)(iii)(E)(*2*), (c)(13)(i)(C), and (c)(14);

   d. Adding paragraph (c)(15); and

   e. Revising paragraph (d).

The revisions and additions read as follows:

§ 64.604 Mandatory minimum standards.

(a) * * *

(2) * * *

(i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, TRS providers and CAs are prohibited from disclosing the content of any relayed conversation (and any non-relayed content communicated in a video conference) regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation (and any non-relayed content communicated in a video conference) beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of

consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

* * * * *

(6) *Visual privacy screens/idle calls.*

(i) Except as provided in paragraph (a)(6)(ii)(A) of this section, a VRS CA may not enable a visual privacy screen or similar feature during a VRS call. Except as provided in paragraph (a)(6)(ii)(B) of this section, a VRS CA must disconnect a VRS call if the caller or the called party to a VRS call enables a privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes, unless the call is a 9-1-1 emergency call or the caller or called party is legitimately placed on hold and is present and waiting for active communications to commence. Prior to disconnecting the call, the CA must announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates continued engagement with the call.

(ii) A VRS CA providing integrated VRS in a multi-party video conference:

(A) May temporarily turn off the CA's video camera when engaged in team interpreting, if the other CA is actively providing ASL interpretation;

(B) May stay connected to the video conference if the VRS user who requested service has turned off the user's camera, as long as that user stays connected to the video conference; and

(C) If five minutes elapse in which no party is responsive or engaged in conversation, the CA shall announce that VRS will be terminated and shall disconnect from the video conference.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(D) * * *

(*2*) * * *

(*xi*) For the provision of integrated VRS in a video conference, in lieu of the information specified in paragraphs (v) and (vi) of this section, a VRS provider may submit information, in accordance with instructions issued by the administrator, that sufficiently identifies the VRS user requesting service and the video conference in which service was provided.

* * * * *

(E) * * *

(*2*) TRS minutes of use for purposes of cost recovery from the TRS Fund are defined as the minutes of use for completed interstate or Internet-based TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. For video conferences, a VRS provider's TRS minutes of use begin when a VRS CA is connected to a video conference and two or more participants are actively present, and ends when the CA disconnects from the video conference or when fewer than two participants are actively present, whichever is earlier.

* * * * *

(14) *TRS calls requiring the use of multiple CAs*. TRS Fund compensation may be paid for more than one CA to handle the following types of calls:

(i) VCO-to-VCO calls between multiple captioned telephone relay service users, multiple IP CTS users,

or captioned telephone relay service users and IP CTS users;

(ii) Calls between users of different types of relay services for which more than one CA is warranted; and

(iii) Video conferences where more than one CA is warranted.

(15) *Exclusivity Agreements*. A TRS provider may not enter into an agreement or any other arrangement with an IVCS provider if such agreement or arrangement would give the TRS provider exclusive access among TRS providers to the IVCS provider's facilities or such agreement or arrangement would give the IVCS provider exclusive access among IVCS providers to the TRS provider's service via a video connection.

(d) The applicable requirements of § 9.14 of this chapter and §§ 64.611, 64.615, 64.621, 64.631, 64.632, 64.644, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 are to be considered mandatory minimum standards.

7. Amend § 64.615 by revising paragraph (a)(1)(i) to read as follows:

§ 64.615 TRS User Registration Database and administrator.

(a) * * *

(1) * * *

(i) Validation shall occur during the call setup process, prior to the placement of the call, except that validation of the provision of integrated VRS in a video conference shall occur prior to the connection of a VRS CA to the video conference.

* * * * *

8. Add § 64.644 to subpart F to read as follows:

§ 64.644 Provision of Integrated VRS in Video Conferences

(a) A VRS provider may provide integrated VRS in a video conference upon request by a registered VRS user (or by a person authorized by a registered enterprise VRS user).

(b) A VRS provider providing integrated VRS in a video conference shall:

(i) Collect from the party requesting service sufficient information to confirm the requesting party's registration for VRS pursuant to the applicable requirements of §§ 64.611 and 64.615; and

(ii) Terminate the CA's connection to the video conference no later than when the requesting VRS user disconnects from the video conference.

(c) A VRS provider may assign more than one CA to participate in a multi-party video conference.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the *Notice* provided in the item. The Commission will send a copy of the entire *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objective of, Proposed Rules

2. In the *Notice*, the Commission proposes to amend its rules to improve the accessibility of Interoperable Video Conferencing Services (IVCS), a form of Advanced Communication Service (ACS).[4] First, the Commission proposes to amend its Part 14 rules, which govern accessibility of ACS. The Commission proposes to add performance objectives that specifically enable the accessibility of IVCS.[5] The Commission proposes that such performance objectives include the provision of (1) speech-to-text (captioning) capabilities; (2) text-to-speech capabilities; and (3) enabling of American Sign Language (ASL) interpreting. The Commission seeks comment on whether additional Part 14 amendments are needed to ensure that video conferencing is accessible. The Commission also seeks comment on whether technical standards are available or could be fashioned for use as safe harbors.[6]

3. Second, the Commission proposes to amend its Part 64 rules governing TRS to provide that the Interstate TRS Fund can be used to support the integrated provision of relay service in video conferences—whether or not the video conferencing platform can be accessed via a dial-up telephone call.[7] In addition, the Commission proposes to modify its rules to facilitate such integration, ensure the appropriate use of VRS with video conferencing, and prevent waste, fraud, and abuse.[8]

B. Legal Basis

4. The authority for this proposed rulemaking is contained in sections 1, 2, 3, (4)(i), (4)(j), 225, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154(i), 154(j), 225, 617.

C. Description and Estimate of the Number of Small Entities Impacted

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business,"

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[1] *See* 5 U.S.C. § 603. The RFA, *see id.* §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *Id.*

[4] *See id.* § 153(1) (defining ACS); *Notice*, paras. 42-67.

[5] *See* 47 CFR Pt. 14 (accessibility of ACS).

[6] *See* 47 U.S.C. § 617(e)(1)(D) (authorized Commission to adopt technical standards as safe harbors).

[7] *See* 47 CFR § 64.604(c)(5)(iii) (establishing Interstate TRS Fund).

[8] *See Notice,* paras. 68-107.

[9] *Id.* § 603(b)(3).

"small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12]

6. If the proposed rules are adopted, the rules will affect the obligations of providers of IVCS and providers of TRS. These services can be included within the broad economic category of All Other Telecommunications.

7. *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.[13] 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.[14] 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.[15] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[16] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[17] Of those firms, 1,039 had revenue of less than $25 million, and 15 firms had annual receipts of $25 million to $49,999,999.[18] 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

8. The proposed changes for which comment is sought in the *Notice*, if adopted, would impose new or modified reporting, recordkeeping or other compliance obligations on certain small entities that provide IVCS or TRS.

9. *ACS Recordkeeping.* The Commission's existing rules require that each manufacturer of equipment (including software) used to provide ACS and each provider of such services not otherwise exempt maintain, in the ordinary course of business and for a reasonable period, records documenting the

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[10] *Id*. § 601(6).

[11] *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."

[12] 15 U.S.C. § 632.

[13] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[14] *Id.*

[15] *Id*.

[16] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[17] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[18] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

efforts taken by such manufacturer or service provider to implement Sections 255 and 716 including: (1) information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.[19]

10. *ACS Reporting.* The Commission's existing rules require that an officer of each manufacturer of equipment (including software) used to provide ACS and an officer of each provider of such services submit to the Commission an annual certificate that records are being kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider has been exempted from compliance with Section 716 under applicable rules.[20]

11. *ACS Compliance Costs.* Because of the diverse manufacturers of equipment used to provide ACS and diverse providers of ACS that may be subject to Section 716, the multiple general and entity-specific factors used in determining, whether for a given manufacturer (or service provider) accessibility for a particular item of ACS equipment (or a particular service) is achievable, and the various provisions of Section 716 and the proposed rules on when and to what extent accessibility must be incorporated into a given item of ACS equipment or service, it is difficult to estimate the costs of compliance for those small entities that may not be covered by a waiver, should the Commission choose to apply any such waivers.[21] Accordingly, the *Notice* seeks comment on the costs of compliance with these proposed rules.

12. *TRS Amendments.* The proposed amendments to the Commission's rules governing TRS are designed to facilitate the use of TRS Communications Assistants in video conferences, ensure the appropriate use of TRS with video conferencing, and prevent waste, fraud, and abuse. These modifications would only apply to the extent that users of a specific small entity TRS provider participate in video conference calls. Otherwise, the TRS compliance requirements would remain unchanged.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[22]

14. The achievability factors referenced in Section D above serve to mitigate adverse impacts and reduce burdens on small entities who provide ACS. The Commission makes determinations about what is achievable for an ACS provider by giving four factors equal weight.[23] Two of these factors take into account the resources available to covered entities and may have a direct impact on small entities and their compliance obligations. The second factor allows consideration of the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or

[19] *See* 47 CFR § 14.31(a).

[20] *See id*. § 14.31(b).

[21] *See id.* § 14.3 (exemption for customized equipment or services); *id.* § 14.5 (waivers for multipurpose services and equipment); *id.* § 14.20 (general obligations subject to achievability).

[22] 5 U.S.C. § 603(c)(1)-(4).

[23] *See* 47 CFR § 14.10(b) (definition of "achievable").

service in question.[24] The third factor reviews the type of operations of the manufacturer or provider.[25] In addition, consideration of the first factor (the nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question)[26] and the fourth factor (the extent to which the service provider or manufacturer in question offers accessibility services or equipment containing varying degrees of functionality and features, and offered at different price points)[27] would benefit all entities subject to Section 716, including small entities.

15. The existing and proposed requirements would apply equally to all IVCS providers and are necessary to ensure video conferencing is accessible to persons with disabilities. The amendments to the TRS rules will only apply to the extent a small entity TRS provider allows its users to participate in integrated IVCS calls. Any burdens on small entities will be offset by the potential for increased revenues by increasing the types of calls and minutes of use that a TRS provider handles.

16. The Notice seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *Notice*. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *Notice*, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

17. None.

[24] *Id*. § 14.10(b)(2).

[25] *Id*. § 14.10(b)(3).

[26] *Id*. § 14.10(b)(1).

[27] *Id*. § 14.10(b)(4).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Access to Video Conferencing,* CG Docket No. 23-161; *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule*, Report and Order, Notice of Proposed Rulemaking, and Order (June 8, 2023)

It was a little over a decade ago that I was asked to go to the White House to attend the signing ceremony for the Twenty-First Century Communications and Video Accessibility Act. It was a gathering I will always remember. For starters, when I was there, I got to meet Stevie Wonder, who is not just a legendary musician but also a tireless champion for access to communications technology for people with disabilities. I also will never forget this day because I had the privilege of working on this historic civil rights legislation when I served as counsel on the Senate Commerce Committee. And signed, sealed, and delivered, there is in fact a signed copy of this legislation on my office wall.

The Twenty-First Century Communications and Video Accessibility Act was historic because it updated the Americans with Disabilities Act for the digital age. It put in law the fundamental idea that when technology changes, our accessibility policies need to evolve and keep pace.

When I sat in the White House that day, I never could have imagined the global pandemic that would come ten years later. It was impossible to understand then just how vulnerable we were to Covid and how dramatically a new pathogen would move our lives online. When physical doors closed and group events were cancelled during the pandemic, the virtual spaces provided by conferencing platforms—like Zoom, Teams, and WebEx—became an essential way to connect for work, school, health, and simple contact with family and friends. If you want evidence, just look right here at the Federal Communications Commission. For two years, we held our monthly open meeting—like the one we are at today—over a video conferencing platform.

While we have moved back to in-person meetings, the role video conferencing platforms play in modern life has expanded. It is one of those changes we take with us out of the pandemic. But for people with disabilities this shift has been especially challenging. That's because inconsistent accessibility features on these platforms have not always made it possible to communicate.

We are changing this today. We start by clarifying that under the Twenty-First Century Communications and Video Accessibility Act, "interoperable video conferencing services" must comply with our accessibility rules. On top of that, we propose new rules to further improve the accessibility of video conferencing services with performance objectives and also propose that our Telecommunications Relay Services fund should support the integration of relay services with video conferencing platforms.

This effort is consistent with the law. It is also aligned with the fundamental idea behind it—that when technology changes our accessibility policies need to evolve and keep pace. That principle was apparent for all at the White House signing ceremony. We give it new meaning today.

The progress we are making here would not be possible without the work of organizations like Telecommunications for the Deaf and Hard of Hearing, the National Association of the Deaf, Communication Service for the Deaf, the Hearing Loss Association of America, the American Council of the Blind, the American Foundation for the Blind, the National Federation of the Blind, Gallaudet University's Technology Access Program, and many other organizations representing those with disabilities. We are blessed to have their interest and assistance in this effort.

I want to thank the staff who made this order and rulemaking possible, including Bob Aldrich, Edyael Casaperalta, Darryl Cooper, Eliot Greenwald, Joshua Mendelsohn, Ike Ofobike, Alejandro Roark,

Michael Scott, Ross Slutsky, William David Wallace, and Dana Warrick from the Consumer and Governmental Affairs Bureau; Terry Cavanaugh, Michele Ellison, Richard Mallen, and William Richardson from the Office of General Counsel; Patrick Brogan, Rachel Kazan, Kim Makuch, Mark Montano, Michelle Schaefer, Emily Talaga, Kimberly Wild, and Andrew Wise from the Office of Economics and Analytics; Soumitra Das and Andrew Mulitz from the Office of the Managing Director; Sharon Lee from the Enforcement Bureau; and Matthew G. Baker, Kirk Burgee, Jodie Griffin, and Terri Natoli from the Wireline Competition Bureau.

STATEMENT OF COMMISSIONER GEOFFREY STARKS

Re: *Access to Video Conferencing,* CG Docket No. 23-161; *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule*, Report and Order, Notice of Proposed Rulemaking, and Order (June 8, 2023)

I frequently speak about the necessity of a high-speed broadband connection in today's world. One of the reasons this is so critical is the rise in video conferencing. From Zoom parent-teacher conferences, to WebEx telehealth calls, to Teams work meetings, web-based video conferencing is now one of the primary ways we communicate, in both our personal and professional lives.

So we must make sure that video conferencing is accessible to everyone. The FCC is charged with ensuring that individuals who are deaf, hard of hearing, deafblind, or who have speech disabilities can communicate in a manner that is functionally equivalent to those without such disabilities. Too often, as we've heard from our Disability Advisory Committee, that isn't the case with video conferencing. Today, we take an important step to change this. We find that all services that meet Congress' definition of "interoperable video conferencing service" must be accessible to and usable by people with disabilities.

With this important finding made, we propose performance objectives these services must meet: captioning, text-to-speech, and sign language interpreting, including integration with video relay service, or VRS. I am glad to see that this item also takes on the critical issue of making sure that speech recognition systems are game-ready to transcribe the speech of all types of speakers, including those with accents.

I look forward to seeing how this record develops, and to continuing to hear from the disability community on these issues as this process moves forward. My thanks to the Commission staff who worked on this item; it has my full support.

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

In the Matter of	)	
	)	
Shared Use of the 42-42.5 GHz Band	)	WT Docket No. 23-158
	)	
Use of Spectrum Bands Above 24 GHz For Mobile Radio Services	)	GN Docket No. 14-177
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: June 8, 2023 **Released: June 9, 2023**

Comment Date: 30 days after Federal Register publication
Reply Comment Date: 60 days after Federal Register publication

By the Commission: Chairwoman Rosenworcel issuing a statement.

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I. INTRODUCTION

1. In order to bring next generation services to consumers, support expanding access for 5G, and prepare for 6G and beyond, we seek ways to ensure that spectrum is used efficiently and effectively. As more advanced, spectrum-intensive technologies develop, finding new ways to increase access to spectrum will only become more important. Innovative, non-exclusive spectrum access models have the potential to provide solutions in this evolving space. This *Notice of Proposed Rulemaking* (*Notice*) seeks comment on how such models might be deployed in the 42 GHz band (42-42.5 GHz) to provide increased access to high-band spectrum,[1] particularly by smaller wireless service providers, and to support efficient,

[1] High-band spectrum is generally defined as above 24 GHz. *See* GAO Report, 5G Deployment: FCC Needs Comprehensive Strategic Planning to Guide Its Efforts, GAO 20-468, at 4 (2020), https://www.gao.gov/products/gao-20-468.

intensive use of the band. We also seek comment on how potential sharing and licensing regimes might lower barriers to entry for smaller or emerging wireless service providers, encourage competition, and prevent spectrum warehousing.

II. BACKGROUND

2. As part of a multiyear effort to enable deployment of advanced wireless services such as 5G, the Commission has made 4.95 gigahertz of spectrum above 24 GHz available on an exclusively-licensed geographic area basis.[2] The Commission has already established service and licensing rules for the 24 GHz, 28 GHz, Upper 37 GHz, 39 GHz, and 47 GHz bands, all of which are available on either a county or a Partial Economic Area (PEA) basis.[3] The Commission has held three auctions to award licenses in these bands, the most recent of which was completed in 2020.[4]

3. The Commission also has made available a significant amount of high-band spectrum for unlicensed use. The rules for unlicensed device use at 57-64 GHz were expanded in 2016 to include 64-71 GHz, bringing the total amount of high-band spectrum available on an unlicensed basis to 14 gigahertz.[5]

4. The 42 GHz band is currently allocated to non-Federal Fixed and Mobile services on a primary basis; there is no Federal allocation in the band.[6] Although the Commission sought comment previously on proposed service rules for this band among other bands above 24 GHz, none are currently in place, and the band has no incumbent licensees.[7] The lower adjacent 40-42 GHz band has been designated for satellite use.[8] The upper adjacent 42.5-43.5 GHz band is allocated to radio astronomy

[2] 47 CFR §§ 30.4, 30.5.

[3] *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, 8154, para. 403 (2016); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.,* Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988 (2017); *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 (2018); *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Fourth Report and Order, 33 FCC Rcd 12168 (2018). *See also* 47 CFR §§ 30.4, 30.5. When citing to the *Report and Order* portions of the 2016 or 2018 documents, we will refer to the *First R&O* or *Third R&O*, respectively. When citing to the *Memorandum Opinion and Order* portion of the 2018 document, we will refer to the *MO&O*. When citing to the *Further Notice of Proposed Rulemaking* portion of the 2016 or 2018 document, we will refer to the *First FNPRM* or *Third FNPRM*, respectively.

[4] *See Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services Closes*, AU Docket No. 19-59, Public Notice, DA 20-253 (OEA-WTB 2020).

[5] *First R&O*, 31 FCC Rcd at 8062-66, paras. 125-131.

[6] 47 CFR § 2.106.

[7] *See First NPRM*, 31 FCC Rcd at 8153-55, paras. 400-407*, Third NPRM*, 33 FCC Rcd at 5595-5600, paras. 47-57. Nine experimental licenses are authorized for testing using this frequency range. Pursuant to the Commission's rules, operation of an experimental radio station is permitted only on the condition that harmful interference is not caused to licensees. If harmful interference to an established radio service occurs, upon becoming aware of such harmful interference the Experimental Radio Service licensee must immediately cease transmissions. *See* 47 CFR § 5.84.

[8] *See Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations*, Second Report and Order, 18 FCC Rcd 25428, 25434, para. 14 (2003) (*V-Band Second Report and Order*).

services (RAS) on a primary basis for Federal and non-Federal use and to the Federal fixed, fixed-satellite (Earth-to-space), and mobile—except aeronautical mobile—services on a primary basis.[9]

5. The Commission previously sought comment on a proposal to authorize flexible fixed and mobile operations in the 42 GHz band under the new part 30 Upper Microwave Flexible Use Service (UMFUS) rules, but only on the condition that adjacent channel RAS at 42.5-43.5 GHz could be protected.[10] Specifically, the Commission sought comment and detailed information on what protections should be established for this adjacent band—for example, whether out-of-band emission limits into the 42.5-43.5 GHz band should be established or whether it was necessary to create a guard band below 42.5 GHz.[11] The Commission also sought comment on the appropriate band plan for the 42 GHz band, including whether the band should be licensed as a single channel, split into two channels, or split into multiple 100 megahertz channels.[12] The Commission proposed licensing the band geographically using PEAs.[13]

6. Pursuant to the directives in the MOBILE NOW Act,[14] the Commission later included in the *Third FNPRM* requests for further comment on a regulatory framework to enable licensed and/or unlicensed uses of the 42 GHz band.[15] The Commission received 17 comments and six reply comments to the *Third FNPRM* relating to the 42 GHz band; a list of these filers and *ex parte* participants addressing the 42 GHz band is contained in Appendix B.[16]

III. DISCUSSION

A. Potential Benefits of Shared Licensing

7. Millimeter wave[17] transmissions have a shorter propagation range than lower-frequency spectrum and are blocked by walls and other obstacles, making it easier to reuse the same band or channel within a smaller geographic area. Technological advances such as MIMO (multiple-input multiple-output) and beamforming antennas offer additional possibilities for reuse between multiple operators. Given that the Commission already has offered both traditionally-licensed spectrum (on a geographic basis) and made spectrum available on a flexible basis for unlicensed devices in the millimeter wave bands, and that the characteristics of millimeter wave spectrum lend themselves to sharing and reuse, we seek to explore how novel approaches to shared licensing may support increased efficiency and intensity of use among a wider range of users within this millimeter wave spectrum.

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[9] 47 CFR § 2.106. Footnote US211 urges applicants for airborne or space stations assignments in the 40.5-42.5 GHz band to take all practicable steps to protect radio astronomy observations in the 42.5-43.5 GHz band from harmful interference. 47 CFR § 2.106 n.US211.

[10] *First NPRM*, 31 FCC Rcd at 8154, para. 403.

[11] *First FNPRM*, 31 FCC Rcd at 8154, para. 405.

[12] *First FNPRM*, 31 FCC Rcd at 8154, para. 406.

[13] *First FNPRM*, 31 FCC Rcd at 8154, para. 403.

[14] MOBILE NOW Act, Pub. L. No. 115-141, Div. P, tit. VI, 132 Stat. 1097 (2018), § 604(a), (b)(1), (b)(2) (codified at 47 U.S.C. § 1503) (requiring the Commission to publish a Notice of Proposed Rulemaking to consider service rules to authorize mobile or fixed terrestrial wireless operations, including for advanced mobile service operations, in the 42 GHz band).

[15] *Third FNPRM*, 33 FCC Rcd at 5595-5600, paras. 47-57.

[16] When citing comments to the *Third FNPRM*, we will use the short name of the commenter contained in Appendix B, followed by the words "Comments" or "Reply Comments." When citing comments to the 2016 *FNPRM*, we will use the short name of the commenter followed by "First FNPRM Comments" or "First FNPRM Reply Comments." Similarly, for *ex parte* filings, we will use the name of the commenter along with the date the *ex parte* was filed as listed in ECFS (this date may be different from the date on the actual *ex parte* letter).

[17] Generally, spectrum between 30 GHz and 300 GHz.

8. Unlike many other millimeter wave bands, the 42 GHz band has no existing operations, either federal or non-federal.[18] This "greenfield" spectrum gives the Commission greater flexibility in designing a shared licensing scheme that may be optimized for future use and can take advantage of new developments in technology more easily than a band with existing deployments. We therefore believe that consideration of alternatives to exclusive geographic area licensing in the 42 GHz band is appropriate.

9. Although the Commission has previously sought comment on licensing the 42 GHz band on the same geographic area basis as the UMFUS bands such as the 37/39 GHz bands,[19] those two ranges are separated by the 40-42 GHz satellite-only band.[20] This separation means that there appear to be fewer potential synergies to using the same licensing approach in both bands than if the two could be combined into a single continuous band.

10. The benefits of potential unlicensed use of the 42 GHz band also appear to be limited. No commenter previously supported making this band available on an unlicensed basis, and de Vries suggested that unlicensed use of the band would not provide adequate protection against harmful interference.[21] This latter point is significant given the importance of protecting RAS operations in the adjacent 42.5-43.5 GHz band. Harmful interference from unlicensed devices would likely be more difficult to resolve, given the additional difficulty relative to licensed operations of identifying the specific interferer.

11. In light of these considerations, we seek comment on applying a shared approach to the 42 GHz band. We ask commenters to enumerate the benefits or drawbacks of this approach, as compared with either an exclusive-use licensed[22] or unlicensed approach.

B. Shared Licensing Approaches

12. In this section, we discuss a variety of potential approaches to licensing the 42 GHz band on a shared basis. These approaches may have different costs and benefits in different situations, and some may facilitate certain uses better than others. We seek comment on these approaches and on any alternatives that might better promote our goals of more efficient spectrum use and lower barriers to spectrum access compared with traditional exclusive-use licensing in this band.

13. *Nationwide non-exclusive licensing.* Under this approach, currently in use in the 70/80/90 GHz bands,[23] operators would first obtain a nationwide non-exclusive license from the Commission, and then coordinate specific deployment sites with a third-party database. This approach would likely require advance work in identifying and setting up a database administrator but could facilitate quick and efficient site registration once established. OTI, focusing on point-to-multipoint service, supports this licensing regime for the 42 GHz band (as well as for the Lower 37 GHz band), and

[18] As of March 31, 2023, nine experimental licenses are authorized for testing using this frequency range; however, as noted above, these licenses are issued on a noninterference basis. *See* 47 CFR § 5.84.

[19] Some commenters supported this approach. *See* AT&T Comments at 4-5; CCA Comments at 2-4; CTIA Comments at 11-12; Ericsson Comments at 9; Nokia Comments at 2; Qualcomm Comments at 14; T-Mobile Comments at 3-5; U.S. Cellular Comments at 6-7. *See also* Verizon First FNPRM Comments at 3.

[20] *Third R&O*, 33 FCC Rcd at 5595-5600, paras. 47-57, 47 CFR § 2.106.

[21] de Vries Comments at 2.

[22] We note that the Commission has already established a record on an exclusive-use licensed approach for the 42 GHz band. *See Third FNPRM*, 33 FCC Rcd at 5599, para. 54; *see also* Appendix B (identifying the commenters addressing the 42 GHz band, in response to the *Third FNPRM*).

[23] 47 CFR §§ 101.1501, 101.1523.

it argues that such a system would reduce costs and facilitate entry and coexistence between licensees.[24] Charter also supports this approach for the Lower 37 GHz band, in order to promote greater efficiency.[25]

14. We seek comment on the potential use of this nationwide non-exclusive licensing approach for the 42 GHz band. Would this model best facilitate efficient use of this spectrum? Would it lower barriers to entry as compared with either traditional exclusive-use licensing, or the other shared licensing approaches discussed in this Notice? Commenters advocating such an approach should also provide information regarding any limitations that should be placed on users. For example, should all licensees operating in a common area have access to the full 500 megahertz or only a portion to preserve the ability of other licensees to operate in that same area? Should there be limitations on the size of a service area that could be registered with a database to promote coexistence and enable access by other licensees? Should the Commission simply make the band available and require licensees to cooperate in the selection and use of frequencies in the band? What are the costs and benefits of taking this approach? We note that OTI's proposal focuses on fixed point-to-multipoint service.[26] Would it be possible to use this approach to license mobile service as well? What would be the costs or obstacles associated with identifying and establishing a database administrator? We seek comment on these issues and any other considerations involved with a nationwide non-exclusive model for this band.

15. *Site-based licensing.* Alternatively, the Commission could license the 42 GHz band on a site-by-site basis directly, without the use of a nationwide non-exclusive license regime or a third-party database. This approach might provide greater transparency than the use of third-party databases, because information for each licensed site—including, for example, construction notifications demonstrating whether buildout requirements have been met—would be publicly available in the Commission's Universal Licensing System (ULS). This would also allow the Commission to be more responsive to potential disputes, and facilitate easier administration and enforcement of buildout requirements, without needing to communicate with the third-party database manager as part of this process.

16. We seek comment on a potential site-based licensing approach in this context. Would licensing each individual site directly be overly burdensome on licensees? Would adopting a site-based licensing approach facilitate the easier enforcement of buildout requirements as compared to using a third party database registrar, and therefore contribute to greater efficiency and less warehousing of this spectrum? To what extent would the lack of a third-party database administrator result in logistical hurdles that might increase costs or decrease efficiency of licensees' operations, or would it be a benefit to have license issues addressed directly with the Commission? Would prospective licensees be able to access this spectrum more quickly and easily under a third-party database approach, versus licensing each site with the Commission? Would there be additional or different technical or operational rules needed under either approach, for example specific rules for resolving coexistence issues under site-based licensing versus relying on the database for this purpose in a third-party registration approach? We seek comment on these and any other considerations relating to this licensing model.

17. *Technology-based sensing.* In the context of the Lower 37 GHz band, Qualcomm proposes that the Commission adopt a technology-based long-term sensing mechanism for millimeter wave spectrum. Qualcomm suggests that this approach would allow "multiple licensees each using any air interface, to share on a licensed basis the entire…band in the same location, on the same frequencies, and at the same time, by taking advantage of the highly directional nature of millimeter wave communications."[27] This proposal, which describes technology-based sensing using a geographic area licensing regime, would require that licensees coordinate among themselves a measurement window

[24] OTI Feb. 27, 2022 *Ex Parte* at 1-2. *See also* OTI Comments at 2-3.

[25] Charter Mar. 4, 2022 *Ex Parte* at 2-3.

[26] OTI Feb. 27, 2022 *Ex Parte* at 1.

[27] Qualcomm Mar. 18, 2022 *Ex Parte* at 1 (emphasis removed). *See also* Qualcomm Oct. 2, 2021 *Ex Parte* at 2.

during which all licensees (except for a priority user in each channel) cease transmissions for a given time period in order to use long-term sensing to detect any active receivers, and then transmit afterwards only in directions where no such receivers are detected.[28] Qualcomm suggests that, if properly implemented, this system would provide priority licensees with more reliable protection than other sensing-based systems such as Listen Before Talk, and would also allow indoor operation across the entire band without disrupting priority or outdoor operations, and without requiring a database.[29]

18. We seek comment on applying this potential approach to the 42 GHz band, and the attendant costs and benefits of adopting a technology-based sensing framework. Because Qualcomm designed this proposal for the Lower 37 GHz band, are there changes that would need to be made to make it suitable for the 42 GHz band? For example, would this proposal be viable without a priority user in a given channel? Similarly, given that Qualcomm's proposal demonstrates how technology-based sensing operates using geographic license areas, would adjustments need to be made to the proposal for a different type of licensing regime? Further, would the measurement and sensing requirements mean that users of the 42 GHz band could not take advantage of the equipment ecosystems of existing millimeter-wave bands? If so, would it increase equipment costs or increase barriers to entry for smaller or emerging operators? Are there other long-term sensing systems that should be considered? We seek comment on what steps the Commission or industry should take to ensure that, if adopted, any technology-based sensing protocols are non-proprietary/open-source or widely available to maximize use and drive innovation. We seek comment on these and any other considerations for this approach.

19. *Coordination mechanism.* We assume that any shared licensing regime will require a coordination mechanism to protect all licensees from harmful interference. Examples of potential coordination mechanisms include the third-party database queries used in 70/80/90 GHz,[30] the Spectrum Access Systems (SAS) used in the Citizens Broadband Radio Service to manage access to spectrum by different classes of licensed users in the 3550-3700 MHz band,[31] the Automated Frequency Coordination (AFC) system recently established in 6 GHz to facilitate coexistence of unlicensed devices with incumbent operations and radio astronomy observatories,[32] and equipment-based long-term sensing like the approach proposed by Qualcomm for the Lower 37 GHz band.[33] We seek comment on these and other potential coordination mechanisms.[34] What are the costs and benefits of each model? Which model would work best for each potential licensing regime? Are there concerns specific to the 42 GHz band that might recommend one coordination mechanism over another?

20. *Other Considerations.* We seek general comment on the sharing and licensing mechanisms described above, as applied to the 42 GHz band. Which model would be most conducive to the intensive and efficient use of this spectrum? Which model would yield the greatest benefits, at the least cost? What are the potential barriers to deployment, operation, or equipment availability under each model? We also seek comment on which types of services might be accommodated by these shared licensing regimes. OTI suggests the Commission also allow for point-to-multipoint service in this

[28] Qualcomm Mar. 18, 2022 *Ex Parte* at Attach. 8-9.

[29] Qualcomm Mar. 18, 2022 *Ex Parte* at Attach. 8-10.

[30] 47 CFR § 101.1523.

[31] *See Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015); 47 CFR § 96.59.

[32] *See 6 GHz Report and Order*, 35 FCC Rcd 3852, para. 22; 47 CFR § 15.407(k) (Automated Frequency Coordination (AFC) system for 6 GHz devices).

[33] *See* Qualcomm Mar. 16, 2022 *Ex Parte* at 2-3, Attach. 8-10.

[34] *See, e.g.*, Michael DiFrancisco et al., Incumbent Informing Capability (IIC) for Time-Based Spectrum Sharing (2021), https://www.ntia.gov/sites/default/files/publications/iic_for_time-based_spectrum_sharing_0.pdf.

context.[35] Would it be possible to accommodate both point-to-point and point-to-multipoint services in the 42 GHz band? Would it also be possible to accommodate mobile service? Are there specific licensing or sharing mechanisms that would better facilitate multiple services in the band? Are there specific technical or licensing requirements or coordination mechanisms that would better facilitate the inclusion of mobile service?

21. We seek comment on whether first-in-time protections[36] are necessary or appropriate for each of the shared licensing regimes discussed above, and if so, what form they should take. Charter argues that the use of time division duplex (TDD) synchronization would enable multiple operators to coexist in exactly the same area.[37] Would requiring TDD synchronization be sufficient to enable such reuse? If so, would such a system render first-in-time protections moot? To what extent would the certainty provided by a first-in-time guarantee be necessary to encourage deployment in this band? Would the lack of such a guarantee deter investment by potential licensees? Do the answers to these questions depend on which shared licensing regime we adopt? Are there licensing mechanisms (such as technology-based sensing) for which a first-in-time guarantee would be unnecessary, or more burdensome than beneficial? If we do not adopt first-in-time protections, what other mechanisms might resolve situations of congestion or harmful interference in a particular area? We seek general comment on this issue, including on any other potential costs or benefits not mentioned here.

22. We also seek comment on the appropriate coordination requirements for site-based licensing or site-based registration (in conjunction with a nationwide license), should we adopt it. OTI suggests that site-based licensing (or registration) should require coordination not only on a site-by-site basis, but on a sector-by-sector basis, to increase spectrum reuse, avoid warehousing, and encourage competition.[38] Would this level of specificity be feasible from a deployment perspective? Would it be unduly burdensome on licensees who might wish to license or register multiple sectors at the same site? How prevalent are deployment scenarios in which operators use only a subset of sectors? Would access to one sector (or some subset of a full arc) at a particular site provide smaller or later-deploying operators with a greater opportunity to deploy alongside other licensees? If we do incorporate sector-level licensing or registration, what would the appropriate sector size be? Is it 30-degree sectors, as OTI suggests?[39] Should we allow licensees or registrants to specify a sector size when applying or registering? If sector-based licensing is not appropriate in the 42 GHz band, is there some other way of licensing or registering sites that might facilitate greater spectrum reuse while still providing licensees with adequate spectrum access?

23. We also seek comment on whether there would be any potential synergies in the instant context with approaches being considered for the Lower 37 GHz (37-37.6 GHz) band. In 2016, the Commission adopted rules to permit fixed and mobile terrestrial operation across the 37 GHz band (37-38.6 GHz) and made the Lower 37 GHz band available for coordinated co-primary sharing between Federal and non-Federal users, with the non-Federal users licensed by rule.[40] The Commission indicated that both Federal and non-Federal users would access the band by registering individual sites through a coordination mechanism and sought comment on the details of that coordination mechanism and what

[35] OTI Feb. 27, 2022 *Ex Parte* at 2.

[36] We could, for example adopt a first-come-first-served licensing or registration scheme in which the first actual users that are licensed/registered have a right to interference protection (provided they deploy their systems within the requisite time period), but they have no right to exclude other users.

[37] Charter Mar. 4, 2022 *Ex Parte* at 2.

[38] OTI Feb. 27, 2022 *Ex Parte* at 2 ("For example, coordination could be by sector (e.g., 30-degree sectors), since directional antennas can accommodate multiple deployments in an area").

[39] OTI Feb. 27, 2022 *Ex Parte* at 2.

[40] *First R&O*, 31 FCC Rcd at 8057, 8059, 8060, paras. 105, 111, 113.

functions it should perform.[41] In 2018, the Commission sought comment on several specific proposals for this coordination mechanism, including first-come-first-served site-based licensing or registration in conjunction with several different types of potential licenses.[42] In addition to OTI, Charter, and Qualcomm, whose proposals are discussed above, several commenters suggest that Commission base its rules for Lower 37 GHz on those adopted for the 70/80 GHz bands.[43] We seek comment on whether we should adopt a shared licensing approach for the 42 GHz band that mirrors the Commission's approach to the Lower 37 GHz band.[44] What would be the benefits or costs to doing so? Are there other ways to leverage the potential of these bands together? We note that unlike the 42 GHz band, the Lower 37 GHz band must accommodate sharing and coordination between Federal and non-Federal users.

24. Finally, we also seek comment on any other model or mechanism for non-exclusive licensing not discussed here which may be better suited for the 42 GHz band, or any other relevant considerations for these or other shared licensing regimes. Commenters suggesting alternative approaches should do so with as much specificity as possible, including discussing the potential costs and benefits of their proposed option as compared with the approaches above and either an exclusive-use licensed or unlicensed approach. We also seek comment on whether we could enable secondary operations in the 42 GHz band, while still ensuring primary licensees protection from harmful interference.[45]

C. Buildout Requirements

25. In traditional exclusive-use geographic area licensing regimes, the Commission typically sets buildout requirements in terms of service coverage of a given percentage of the population of the license area.[46] For licensing regimes not tied to a particular license area, or where a license area is shared among multiple licensees, however, this metric may not be suitable or feasible. Our overarching goal is to adopt a buildout metric that ensures in each circumstance that spectrum is meaningfully being put to use in practice. To this end, we seek comment on the appropriate buildout requirements for potential licensees under the various approaches described above.

26. One buildout approach could be to require licensees to begin operations within a specified time. OTI has proposed that an appropriate timeframe would be 12 months or less from site registration, after which a licensee would lose any first-in-time protections for that site.[47] We seek comment on this proposal, including any alternative timeframes. We also seek comment on whether this approach would be better suited to certain sharing and licensing regimes, and, conversely, whether it might be unsuitable or inapplicable to certain others. Recognizing that we seek comment above on whether we should adopt first-in-time protections for this band, if we ultimately do not adopt such protections as part of the shared licensing regime here, what other consequence for failing to meet a build-out deadline might be appropriate? Would any consequence for failure to build out in a timely manner be necessary in such circumstances?

27. We also seek general comment on the appropriate buildout metrics for potential technology-based sharing regimes. If we ultimately adopt a sharing mechanism where the equipment itself determines access to spectrum, should we impose any buildout requirement at all, or is the inherently non-exclusive nature of such a regime sufficient to ensure efficient use and prevent spectrum

[41] *First R&O*, 31 FCC Rcd at 8060, para. 113; *First FNPRM*, 31 FCC Rcd at 8170, paras. 448-49.

[42] *Third FNPRM*, 33 FCC Rcd at 5602, 5604-5, paras. 65, 69-73.

[43] Ericsson Comments at 12; TIA Comments at 3-4.

[44] *See* NCTA Jun. 1, 2023 *Ex Parte*.

[45] *See* Kuiper May 31, 2023 *Ex Parte*.

[46] *See, e.g.*, 47 CFR § 30.104.

[47] OTI Feb. 27, 2022 *Ex Parte* at 2.

warehousing? We seek comment on these and any other considerations for buildout requirements under sharing regimes based on technology-based long-term sensing, including any potential solutions not discussed here.

28. We also seek comment on any other potential buildout requirement metrics or levels suitable for the sharing mechanisms discussed in this Notice. Additionally, to the extent that commenters have suggestions for other potential sharing or licensing mechanisms, we encourage them to include suggestions for corresponding buildout requirements, or other methods of ensuring efficient spectrum use and preventing spectrum warehousing.

D. License Term and Applicability of Part 30 Technical Rules

29. The Commission previously sought comment on licensing the 42 GHz band under the part 30 UMFUS licensing and technical rules.[48] Although we are not proposing to adopt an exclusive-use licensing regime, we do propose to adopt a ten-year license term for licenses in this band, similar to other part 30 services. We seek comment on this proposal, and ask whether there are additional considerations in adopting a ten-year license term under a shared licensing approach.

30. The millimeter wave bands the Commission has previously licensed are all governed by the technical rules found in part 30.[49] This uniform treatment facilitates development of a common equipment ecosystem and easier operator deployment, and is supported generally in the underlying record in this proceeding.[50] Inclusion in this uniform technical regime might allow these benefits to also accrue to the 42 GHz band. If this band is made available under a licensing scheme significantly different from the other part 30 bands, however, it is possible that those benefits might be diminished, or costs or other inefficiencies incurred.

31. We seek comment on the applicability of the part 30 technical rules to the 42 GHz band as licensed under the various potential sharing regimes outlined above. Should we apply these existing technical rules for the 42 GHz band, regardless of the licensing regime we ultimately adopt? Are there changes to the technical rules might be appropriate or necessary to accommodate shared licensing? Are there different costs or benefits that may be associated with the existing part 30 technical rules in this context, which we have not previously considered?

E. Band Plan

32. In the *Third FNPRM*, the Commission proposed to license the 42 GHz band as five 100 megahertz channels.[51] Most commenters supported the Commission's proposal.[52] They noted that a 100 megahertz channel is a building block for millimeter wave mobile equipment, and that this channel size is consistent with 3rd Generation Partnership Project ("3GPP") standards in the millimeter wave bands.[53] Several commenters also asserted that 100 megahertz block sizes would facilitate the deployment of 5G services.[54] A few commenters advocated using 200 MHz channels. For example, TIA argues that wider

[48] *FNPRM*, 31 FCC Rcd at 8154, para. 403.

[49] 47 CFR §§ 30.201-.209.

[50] *See*, *e.g.*, CTIA First FNPRM Comments at 11-12, Verizon First FNPRM Comments at 9. No commenters oppose the inclusion of 42 GHz in these technical rules, or suggest specific variations.

[51] *Third FNPRM*, 33 FCC Rcd at 5600, para. 57.

[52] AT&T Comments at 4; CCA Comments at 4; CTIA Comments at 12; Ericsson Comments at 9; Nokia Comments at 2; T-Mobile Comments at 6; U.S. Cellular Comments at 7-8.

[53] T-Mobile Comments at 6*; see also* U.S. Cellular Comments at 7.

[54] CTIA Comments at 12. *See also* AT&T Comments at 3; CCA Comments at 4; U.S. Cellular Comments at 2-3.

channels will better support 5G services.[55] In response to the *First FNPRM*, Qualcomm also supported a band plan with two 200 megahertz channels.[56]

33. We again propose to license the 42 GHz band in five 100 megahertz channels and seek comment on this proposal in the context of the new proposals under consideration here. Would the benefits previously noted by commenters supportive of 100 megahertz channels still apply under the sharing regimes discussed above? Would the increased flexibility of a non-exclusive licensing regime benefit more from 100 megahertz channels, or from another channel size? Are there particular sharing or licensing regimes that would benefit most from a different channel size?

F. Protecting RAS Services at 42.5-43.5 GHz

34. As noted above, in the *First FNPRM*, the Commission proposed to authorize flexible mobile and fixed operations in the 42 GHz band, provided that RAS could be protected in the adjacent 42.5-43.5 GHz band.[57] The Commission sought comment on the forms that such protection should take, *e.g.*, whether it should establish special out-of-band emission (OOBE) limits into the 42.5-43.5 GHz band or create a guard band below 42.5 GHz.[58] After noting the National Academy of Sciences' Committee on Radio Frequencies (CORF) and T-Mobile's agreement that RAS bands could be protected by limiting UMFUS operations near an RAS observatory, the Commission renewed its call in the *Third FNPRM* for interested parties to provide detailed technical analysis of the coexistence of RAS with terrestrial mobile operations that fully supported any proposed methodology.[59] Specifically, we asked whether our rules should be based on the International Telecommunication Union Radiocommunication Sector (ITU-R) RA.769 parameters, or alternate protection criteria, and sought comment on whether to establish coordination zones around relevant RAS facilities.[60]

35. CORF has asserted that frequency lines at 42.519, 42.821, 43.122, and 43.424 GHz are of the greatest importance for the detection of strong silicon monoxide maser emissions from stars and star forming regions, which facilitates the measurement of stellar temperature, density, wind velocity and other parameters.[61] The 42 GHz band also is one of the preferred bands for measuring continuum observations.[62] RAS observations are currently made at a limited set of observatories around the United States.[63] Additionally, according to a report by the National Academy of Sciences, Engineering, and Medicine, the Next Generation Very Large Array (ngVLA) is a top priority for U.S. astronomy in the coming decade and would include new sites predominantly near the current VLA, but also throughout New Mexico and adjacent states with long baseline stations in close proximity to existing VLBA

[55] TIA addressed this issue in its comments to a separate Further Notice. *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket 14-177, Fourth Further Notice of Proposed Rulemaking, 33 FCC Rcd 7674 (2018) (Fourth FNPRM). *See* TIA Fourth FNPRM Comments at 5-6, Table 1, 11.

[56] Qualcomm First FNPRM Comments at 9.

[57] *First FNPRM*, 31 FCC Rcd at 8154, para. 405. The adjacent band, 42.5-43.5 GHz, is allocated for federal and non-federal RAS operations and federal fixed, earth-to-space satellite and mobile services. 47 CFR § 2.106.

[58] *First FNPRM*, 31 FCC Rcd at 8154, para. 405.

[59] *Third FNPRM*, 33 FCC Rcd at 5599-5600, para. 56.

[60] *Third FNPRM*, 33 FCC Rcd at 5600, para. 56.

[61] CORF First FNPRM Comments at 8 n.6; CORF Mar. 14, 2016 NPRM Reply Comments at 8-9.

[62] CORF First FNPRM Comments at 9.

[63] RAS observations in this band are currently made at various U.S. observatories: Green Bank Telescope (GBT), WV; VLA Socorro, NM; Westford, MA (Haystack); Brewster, WA; Fort Davis, TX; Hancock, NH; Kitt Peak, AZ; Los Alamos, NM; Mauna Kea, HI; North Liberty, IA; Owens Valley, CA; Pie Town, NM; St. Croix, VI. CORF FNPRM Comments at 9 & n.7 (*citing* 47 CFR § 2.106, n.US131).

stations.[64] Because a typical radio telescope receives less than 1 percent of one-billionth of one-billionth of a watt (10^{-20} W) from a typical cosmic object, the telescope is particularly vulnerable to in-band emissions, spurious out-of-band emissions, and emissions producing harmonics, making protection important.[65] CORF has represented that the detrimental levels for continuum and spectral line radio astronomy observations for single dishes are -227 dBW/m^2/Hz and -210 dBW/m^2/Hz, respectively, for the average across the full 1 gigahertz of the 42.5-43.5 GHz band and the peak level in any single 500 kHz channel, as based upon ITU-R RA.769, Tables 1 and 2, respectively.[66] For observations using the entire VLBA, CORF represented that the corresponding limit is -175 dBW/m^2/Hz).[67] T-Mobile agreed that the ITU PFD limits are appropriate to address potential interference to RAS.[68]

36. Proponents of using the 42 GHz band for flexible terrestrial wireless use have generally agreed that various practical methods may be effective at protecting RAS, including use of exclusion zones, coordination zones, and aggregate emissions limits—particularly because RAS sites are remotely located.[69] None provide detailed information or examples showing how these proposed methods would work in practice.[70] Regarding whether it is necessary or appropriate to establish a guard band below 42.5 GHz in order to protect RAS, CORF stated that a guard band of 200 MHz within the radio horizon around radio astronomy sites would meet the ITU-R RA.769 protection criteria.[71] T-Mobile argued that a guard band is unnecessary and the ITU protection threshold can be met with minimum exclusion distances.[72] In response to the *First FNPRM*, some commenters asserted that a guard band would narrow the usable aspects of the 42 GHz band.[73] TIA argued it should be possible to craft UMFUS operating rules that protect adjacent RAS services via geographic coordination or otherwise, making guard bands unnecessary, especially since they interfere with the Commission's channel block plans.[74]

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[64] *See* National Academy of Sciences, Engineering, and Medicine, Pathways to Discovery in Astronomy and Astrophysics for the 2020s S-34, § 7.6.1.4 (2021), https://doi.org/10.17226/26141.

[65] CORF Comments at 3. *See also* CORF First FNPRM Comments at 3.

[66] CORF Comments at 6; CORF First FNPRM Comments at 9. *See also First FNPRM*, 31 FCC Rcd at 8154, para. 405 (citing CORF Mar. 14, 2016 NPRM Reply Comments at 8-9).

[67] CORF Comments at 6; CORF First FNPRM Comments at 9. *See also First FNPRM*, 31 FCC Rcd at 8154, para. 405 (citing CORF Mar. 14, 2016 NPRM Reply Comments at 9).

[68] T-Mobile Comments at 8. *See also* T-Mobile First FNPRM Comments at 13-14 & Appendix B (citing ITU-R RA.769).

[69] *See* AT&T Comments at 6-7; CORF Comments at 8; CTIA Comments at 12-13; Ericsson Comments at 10; Nokia Comments at 2; T-Mobile Comments at 7-8; U.S. Cellular Comments at 6; CORF Reply Comments at 14; U.S. Cellular Reply Comments at 4. *See also* T-Mobile First FNPRM Comments at 13-14; TIA First FNPRM Comments at 7; AT&T First FNPRM Reply Comments at 7; CTIA First FNPRM Reply Comments at 16; Qualcomm First FNRPM Reply Comments at 4; T-Mobile First FNPRM Reply Comments at 25.

[70] Although they provide no new studies, Nokia and others direct the Commission to T-Mobile's RAS sharing study, produced for the 32/47/50 GHz bands and assert this study is well-suited to also calculating protection zones for RAS sites operating adjacent to the 42 GHz band. *See* Nokia Comments at 2; Ericsson Comments at 10, n.33; CTIA Comments at 12-13. CORF agrees this study could be applicable for calculating coordination distances. CORF Reply Comment at 14 & n.52. We do not find this study sufficient to establish coordination distances because it is based on an analysis done with respect to different systems in the 32 GHz band.

[71] CORF Comments at 8-9.

[72] T-Mobile Reply Comments at 6-8.

[73] FWCC First FNPRM Comments at 5; TIA First FNPRM Comments at 7. FWCC urges that any guard band adopted should be limited to fixed-only operations subject to full fixed service frequency coordination to control emissions in the direction of RAS sites. FWCC First FNPRM Comments at 6.

[74] TIA First FNPRM Comments at 7.

37. We agree with CORF and T-Mobile that RAS bands can probably be protected by limiting 42 GHz operations near a RAS facility to reduce the risk of terrestrial interference. Because we believe that geographic separation of 42 GHz licensed operations and RAS facilities will provide sufficient protection of RAS facilities, we do not propose to impose out-of-band emissions limits on licenses in the 42 GHz band that are tighter than out-of-band-emissions limits on UMFUS licenses in other millimeter wave bands. Furthermore, we do not propose to establish coordination zones around RAS facilities because we believe that compliance with the limits we propose today will be sufficient to protect RAS observations. The record to date does not contain sufficient information to determine whether, and if so, at what distances, coordination zones would be appropriate, but we invite the submission of such information from commenters.

38. We propose to require 42 GHz licensees to limit emissions into the 42.5-43.5 GHz passive band at those relatively few locations where RAS observatories make observations in this band. We propose to adopt the parameters established by ITU-R RA.769 as the interference protection criteria for RAS operations, as suggested by CORF and T-Mobile. While we believe that these parameters are extremely conservative, no one has previously submitted studies suggesting alternative criteria, and the ITU's analysis indicates compliance with those criteria are likely to protect the RAS facilities from harmful interference. Given that the observatories are mostly located in remote areas and signals in this frequency range are significantly attenuated by terrain and clutter, we expect that adopting these conservative criteria would have only a small impact on 42 GHz licensed operations.

39. Therefore, for all 42 GHz licensees operating near designated RAS facilities, we propose that: (1) the spectral power flux density received at the RAS sites at the Haystack Observatory (Westford, MA), the Green Bank Telescope (Green Bank, WV) and the Very Large Array (Socorro, NM) averaged over the entire 42.5-43.5 GHz frequency range must not exceed -227 dBW/m^2/Hz; (2) the spectral power flux density received within any 500 kHz channel within the 42.5-43.5 GHz frequency range for the three sites noted above must not exceed -210 dBW/m^2/Hz; and, (3) the spectral power flux density within the 42.5-43.5 GHz frequency range for the Very Long Baseline Array (VLBA) Stations must not exceed -175 dBW/m^2/Hz. We propose to list the relevant sites in a new footnote to the United States Table of Frequency Allocations for clarity. We believe that these limits are sufficient to protect RAS operations in the adjacent band without establishing a guard band within the 42 GHz band. We emphasize that our proposal to adopt these limits is based on the specific factors present in the 42 GHz band and would not necessarily control future decisions we make regarding other frequency bands subject to note US342. In addition to these requirements, the existing requirements for coordination in the National Radio Quiet Zone will be maintained.[75] We seek comment on this proposal.

G. Costs and Benefits and Diversity, Equity, and Inclusion

40. We invite comment generally on the costs and benefits associated with the various approaches discussed in this Notice. Are there any aspects of the above issues that the Commission has not considered? Are there any studies, efforts, or analyses that we should consider? If so, we ask that commenters identify them and explain why they should be considered.

41. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,[76] 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

[75] 47 CFR § 1.924.

[76] 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.

affected by persistent poverty or inequality, invites comment on any equity-related considerations[77] and any potential benefits that may be associated with the various approaches and issues discussed herein. Specifically, we seek comment on how the various approaches that the Commission may consider may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

42. *Filing of Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.[78] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[79]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/filings.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[80]
- Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also

[77] 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).

[78] 47 CFR §§ 1.415, 1.419.

[79] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

[80] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice*, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate our internal review process.

43. *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.

44. *Ex Parte Rules.* The proceeding that this Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[81] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b).[82] In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

45. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[83] 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."[84] Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule changes proposed in this *Notice of Proposed Rulemaking* on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

46. *Initial Paperwork Reduction Act of 1995 Analysis*. This *Notice of Proposed Rulemaking* may contain proposed new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA).[85] If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d)

[81] 47 CFR § 1.1200 *et seq.*

[82] *Id.* § 1.1206(b).

[83] *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).

[84] 5 U.S.C. § 605(b).

[85] Pub. L. No. 104-13.

of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in these proceedings. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[86] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[87]

47. *Further Information.* For further information on this proceeding, contact Catherine Schroeder of the Wireless Telecommunications Bureau, Broadband Division, at 202-418-1956, or Catherine.Schroeder@fcc.gov.

V. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4, 301, 302, 303, 304, 307, 309, and 310 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154, 301, 302a, 303, 304, 307, and 309, Section 604 of the MOBILE NOW Act, 47 U.S.C. § 1503, and Section 1.411 of the Commission's Rules, 47 CFR § 1.411, that this *Notice of Proposed Rulemaking* IS HEREBY ADOPTED.

49. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[86] Pub. L. No. 107-198.

[87] 44 U.S.C. § 3506(c)(4).

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, we propose to increase the Nation's supply of spectrum for mobile broadband by adopting rules for fixed and mobile services in the 42-42.5 GHz band. We propose to license this spectrum on a shared, non-exclusive basis. This additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service. It will also make possible new types of services for consumers and businesses. We seek comment on the specific types of licenses under which we should make this spectrum available, including non-exclusive nationwide licensing, site-based licensing, and technology-based sensing. We seek comment in particular on what licensing models might best facilitate entry and participation by smaller and emerging entities as well as comments that provide options for potentially lowering barriers to entry for smaller or emerging wireless service providers, encourage competition, and avoid spectrum warehousing.

3. Until recently, the millimeter wave (mmW) bands were generally considered unsuitable for mobile applications because of propagation losses at such high frequencies and the inability of mmW signals to propagate around obstacles. As increasing congestion has begun to fill the lower bands and carriers have resorted to smaller and smaller microcells in order to re-use the available spectrum, the industry is taking another look at the mmW bands and beginning to realize that at least some of the presumed disadvantages can be turned to advantages. For example, short transmission paths and high propagation losses can facilitate spectrum re-use in microcellular deployments by limiting the amount of interference between adjacent cells. Furthermore, where longer paths are desired, the extremely short wavelengths of mmW signals make it feasible for very small antennas to concentrate signals into highly focused beams with enough gain to overcome propagation losses. The short wavelengths of mmW signals also make it possible to build multi-element, dynamic beam-forming antennas that will be small enough to fit into handsets—a feat that might never be possible at the lower, longer-wavelength frequencies below 6 GHz where cell phones operate today.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4, 301, 302, 303, 304, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 301, 302a, 303, 304, 307, and 309, Section 604 of the MOBILE NOW Act, 47 U.S.C. § 1503, and Section 1.411 of the Commission's Rules, 47 CFR § 1.411.

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[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act."[6] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

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.[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] Finally, the

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[4] 5 U.S.C. § 603(b)(3).

[5] 5 U.S.C. § 601(6).

[6] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[7] 15 U.S.C. § 632.

[8] *See* 5 U.S.C. § 601(3)-(6).

[9] *See* SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf. (Nov 2021).

[10] *Id.*

[11] *See* 5 U.S.C. § 601(4).

[12] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number 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….)

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]

8. *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

(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] *See* 5 U.S.C. § 601(5).

[15] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[16] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[17] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[18] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[19] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[20] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[21] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

[22] *See* 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
(continued….)

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 a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[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.

9. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[37]

10. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect

(Continued from previous page)
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.

[37] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

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.

11. *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.[38] 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.[39] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[40] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[41] Of this number, 624 firms had fewer than 250 employees.[42] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

12. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[43] 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.[44] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[45] Of this number, 242 firms had revenue of less than $25 million.[46] 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.[47] Of these providers, the Commission estimates that approximately

[38] *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.

[39] *Id.*

[40] *See* 13 CFR § 121.201, NAICS Code 334220.

[41] *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.

[42] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[43] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[44] *See* 13 CFR § 121.201, NAICS Code 517410.

[45] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[47] 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.

48 providers have 1,500 or fewer employees.[48] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

13. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[49] 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.[50] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[51] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[52] Of that number, 2,837 firms employed fewer than 250 employees.[53] 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.[54] Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.[55] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *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.[56] 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.[57] 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.[58] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[59] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[60] Of those firms, 1,039 had revenue of less than $25 million.[61] Based on this

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[48] *Id.*

[49] *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.

[50] *Id.*

[51] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[52] *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.

[53] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[54] 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.

[55] *Id.*

[56] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[57] *Id.*

[58] *Id.*

[59] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[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 517919,

(continued….)

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

15. We expect the proposed rules in the *Notice* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other licensees and applicants. At this time however, the Commission is not in a position to determine whether, if adopted, our proposals and the matters upon which we seek comment will require small entities to hire professionals to comply and cannot quantify the cost of compliance with the potential rule changes discussed herein.

16. Depending on the licensing model we ultimately adopt for the 42 GHz band, applicants for licenses may be required to coordinate their proposed operations with other licensees and applicants. Under the relevant licensing models, such coordination would be necessary to ensure that neighboring operations will not interfere with each other. The Commission seeks comment on the cost to small entities for this potential coordination with operations.

17. Small entities and other applicants in the 42 GHz band may be required to meet buildout requirements. Depending on the type of buildout requirement we ultimately adopt, licensees may be required to provide information to the Commission on the facilities they have constructed, the nature of the service they are providing, and the extent to which they are providing coverage in their license or registered site area. Any performance or buildout requirements we adopt will be structured to ensure that spectrum is being put into use and to encourage rapid deployment of next generation wireless services, including 5G, which would benefit small entities and the industry as a whole. The Commission seeks comment as to the potential equipment, operational and implementation costs to small entities working towards complying with these buildout requirements.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include 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."[62]

19. We believe the potential licensing models on which we seek comment would facilitate access to spectrum by small businesses and a wide variety of other entities. However, 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 *Notice*, and to better explore options and alternatives, the Commission has sought comment from the parties. Of particular interest are those comments providing insight as to whether any of the costs associated with any potential performance or buildout requirements can be alleviated for

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https://data.census.gov/cedsci/table?y=2017&n=517919&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] 5 U.S.C. § 603(a)(1)-(4).

small businesses. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *Notice*.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

20. None.

APPENDIX B

List of Commenters to *Third FNPRM* Addressing 42 GHz

Comments
5G Americas
AT&T Services Inc. (AT&T)
Competitive Carriers Association (CCA)
The National Academy of Sciences, through its Committee on Radio Frequencies (CORF)
CTIA
Ericsson
Intel Corporation and Cisco Systems, Inc. (Intel/Cisco)
Nokia
Petri Mähönen, Ljiljana Simić and Pierre de Vries (de Vries)
Qualcomm Incorporated (Qualcomm)
Samsung Electronics America (Samsung)
SES Americom, Inc. and its affiliate O3b Limited (SES)
Telecommunications Industry Association (TIA)
T-Mobile USA, Inc. (T-Mobile)
United States Cellular Corporation (U.S. Cellular)

Reply Comments
AT&T
CTIA
TIA
T-Mobile
U.S. Cellular

***Ex Parte* Filers**
Kuiper Systems, LLC (Kuiper)
NCTA – The Internet & Television Association (NCTA)
Open Technology Institute (OTI)

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Shared Use of the 42-42.5 GHz Band*, WT Docket No. 23-158; *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177 (June 8, 2023)

I spent the first half of this week in Sharm El-Sheikh, Egypt at a gathering of the International Telecommunication Union. It was a whirlwind of a trip. But it was worth every minute. Because in these international fora the United States can make clear to our counterparts around the world that we intend to lead on spectrum policy.

So much of what is creative in wireless happened here first, on our shores. And this agency played no small part in making this true. We were the first to borrow the academic ideas of Ronald Coase and reimagine the distribution of airwaves with auctions. More than three decades later we have raised $233 billion using this tool—one we need Congress to continue. We were also the first to take a handful of underused frequencies known as "garbage bands" in the 900 MHz, 2.4 GHz, and 5.8 GHz range and do something radical—give the public access to these airwaves. It worked because this is the unlicensed spectrum where Wi-Fi was born. More recently, we blazed a trail for incentive auctions—again, the first to do this in the world. We also created an innovative structure with a hierarchy of rights in the 3.5 GHz band combined with new systems to support dynamic spectrum access.

Our goal today is to continue that creative streak. This time we are going to do it with a millimeter wave band. When I took over at the Federal Communications Commission, I believed the agency had overinvested in millimeter wave auctions at the expense of moving to market the mid-band spectrum essential for nationwide 5G service. So we pivoted—fast. With the help of my colleagues, we quickly launched auctions in the 3.45 GHz band and 2.5 GHz band. With those successful mid-band efforts in the rear-view mirror, we are now turning back to millimeter wave. But this time we want to consider something different.

In Egypt, so many of my global counterparts are wrestling with the same thing. They look at the wireless future and wonder what to do with high-band airwaves that have so much capacity but such limited propagation. In the United States, we have already auctioned nearly five gigahertz of this spectrum for traditional exclusive use. I believe now it's time for something new.

In the 42 GHz band we have 500 megahertz of greenfield airwaves with no federal or commercial incumbencies. So we are putting out ideas. We are exploring non-exclusive access models. This could entail using a technology-based sensing mechanism to help operators actively detect and avoid one another. It could involve non-exclusive nationwide licenses that leverage a database to facilitate co-existence. It could also entail site-based licensing. To get even more out of this effort we ask if our approaches could be combined with shared-used models in other spectrum bands, like the lower 37 GHz band.

Our goal here is to come up with a new model to lower barriers, encourage competition and maximize the opportunities in millimeter wave spectrum. In short, it's time to be creative. I look forward to the record that develops—and then look forward to sharing our creativity with the world.

I want to thank the staff responsible for getting this effort underway: John Lockwood, Susan Mort, John Schauble, Blaise Scinto, Catherine Schroeder, Joel Taubenblatt, and Jennifer Tomchin from the Wireless Telecommunications Bureau; Bahman Badipour, Michael Ha, Ira Keltz, Nicholas Oros, Ron Repasi, and Dana Shaffer from the Office of Engineering and Technology; Judith Dempsey, Evan Kwerel, Paul Lafontaine, Catherine Matraves, Giulia McHenry, Gary Michaels, Martha Stancill, and Don Stockdale from the Office of Economics and Analytics; Karl Kensinger and Troy Tanner from the Space Bureau; Deborah Broderson, Doug Klein, and William Richardson from the Office of General Counsel; and Michael Gussow, Joy Ragsdale, and Chana Wilkerson from the Office of Communications Business Opportunities.

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

In the Matter of	)	
	)	
All-In Pricing for Cable and Satellite Television Service	)	MB Docket No. 23-203
	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: June 14, 2023 **Released: June 20, 2023**

Comment Date: 30 days after date of publication in the Federal Register
Reply Comment Date: 60 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel issuing a separate statement.

I. INTRODUCTION

1. Access to clear, easy-to-understand, and accurate information about the pricing of video services helps consumers make informed choices and encourages competition in the market. It does so by empowering consumers with information to comparison shop and to find the video programming services that best meets their needs and matches their budget.

2. Consumers who choose a video service based on an advertised monthly price may be surprised by unexpected fees related to the cost of video programming that raise the amount of the bill significantly. These fees, with names like broadcast TV fee, or regional sports programming surcharge, are listed in the fine print as "fees" or "taxes and surcharges," separate from the top-line listed service price and can result in a bill that is substantially more than the advertised price. This categorization can be potentially misleading and interpreted as a government-imposed tax or fee, instead of a company-imposed service fee increase. This practice can also make it difficult for consumers to compare the service prices of competing video service providers.

3. In this Notice of Proposed Rulemaking (NPRM), we propose to enhance pricing transparency by requiring cable operators and direct broadcast satellite (DBS) providers to specify the "all-in" price for service in their promotional materials and on subscribers' bills. This proposal would require cable operators and DBS providers to clearly and prominently display the total cost of video programming service. This all-in pricing proposal is intended to give consumers a transparent and accurate reflection of their subscription payment obligations and eliminate unexpected fees. It also seeks to provide consumers with the ability to comparison shop among competing cable operators and DBS providers, and to compare programming costs against alternative programming providers, including streaming services. We also seek comment on whether we should consider expanding the requirements of this proceeding to other types of multichannel video programming providers (MVPDs) and on our authority to do so.

II. BACKGROUND

4. Sections 335 and 632 of the Communications Act of 1934, as amended (the Act), authorize the Commission to adopt public interest regulations for DBS and direct the Commission to adopt cable customer service requirements, respectively.[1] In 2019, Congress adopted the Television

[1] 47 U.S.C. §§ 335, 552.

Viewer Protection Act of 2019 (TVPA), which bolstered the consumer protection provisions of the Act by adding specific consumer protections.[2] The TVPA revised the Act to add section 642, which, among other things, requires greater transparency in subscribers' bills.[3] As it considered this legislation, Congress expressed specific concern that consumers face "unexpected and confusing fees when purchasing video programming," including "fees for broadcast TV," and noted that the practice of charging these fees began in the late 2000s.[4] In 2021, the Media Bureau sought comment on the steps MVPDs have taken to implement the TVPA requirements and on whether consumers found those steps effective in furthering Congress's goal of protecting consumers when purchasing MVPD or broadband service.[5] In response to that PN, Consumer Reports commented that below-the-line fees, "which are solely the creation of the provider (versus regulatory fees that are passed on to the consumer)[,] made up the bulk" of costs that are added to advertised rates and MVPD subscribers' bills.[6] It appears that since adoption of the TVPA, the practice of charging subscribers unexpected "fees" (for example, for broadcast television programming and regional sports programming listed separately from the monthly subscription rate for video programming service) that are actually charges for the video programming service for which the subscriber pays, has continued.[7] Moreover, websites, advertisements, and other promotional materials may advertise a top-line price that does not note prominently the mandatory programming costs that make up the service until the customer signs up for service. For example, those materials use a different font size (often in fine print) and separate from the proclaimed monthly subscription fee amounts extra "fees" designated by the provider that consumers will also need to pay for video programming that they will receive.[8]

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[2] The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA was enacted as Title X of the "Further Consolidated Appropriations Act, 2020" (H.R. 1865, 116th Cong.).

[3] 47 U.S.C. § 562. Section 642 provides four main areas of consumer protection related to billing: (1) before entering into a contract with a consumer, an MVPD must provide the consumer the total monthly charge for MVPD service, whether offered individually or as part of a bundled service, including any related administrative fees, equipment fees, or other charges, (2) not later than 24 hours after contracting with a consumer, an MVPD must provide the total monthly charge that a consumer can expect to pay and permit the consumer to cancel without fee or penalty for 24 hours, (3) with respect to electronic bills, MVPDs must include an itemized statement that breaks down the total amount charged for MVPD service and the amount of all related taxes, administrative fees, equipment fees, or other charges; the termination date of the contract for service between the consumer and the provider; and the termination date of any applicable promotional discount, and (4) MVPDs and fixed broadband Internet service providers must not charge a consumer for using their own equipment and also must not charge lease or rental fees to subscribers to whom they do not provide equipment. *Id*.

[4] H.R. Rep 116–329, at 6 (2019). *See also* Consumer Reports, How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service, https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf (2019) (detailing the cable industry's practice of charging "hidden fees" beyond the rates that they advertise and promote).

[5] *Media Bureau Seeks Comment on Implementation of the Television Viewer Protection Act of 2019*, Public Notice, DA 21-1610, 2021 WL 6063052 (MB Dec. 20, 2021). Commenters in the public notice docket should update and refile their comments from the public notice docket into the docket for this proceeding (MB Docket No. 23-203), to the extent they are relevant.

[6] *See* Consumer Reports Reply Comments, MB Docket No. 21-501, at 2 (filed Mar. 7, 2022) (CR Reply).

[7] *Compare, e.g.*, Sharon Lurye, *Comcast releases rate changes for 2016*, Philly Voice, Nov. 24, 2015, https://www.phillyvoice.com/comcast-releases-rate-changes-2016/ *with* Erin McCarthy, *Comcast's rates are increasing again. Here's what to expect*, The Philadelphia Inquirer, Dec. 5, 2022, https://www.inquirer.com/business/comcast/comcast-rate-increase-internet-broadcast-sports-fees-20221205.html (indicating that in Philadelphia, "broadcast TV" and "regional sports" fees increased from $48 per year in in 2014 to over $415 per year in 2023).

[8] *See*, *e.g.*, Build Your Plan with Xfinity for Internet, TV, Mobile and Security, https://www.xfinity.com/digital/offers/plan-builder; Spectrum Packages – Best Bundles for Cable TV, Internet &

(continued….)

III. DISCUSSION

5. We believe that the public interest requires that cable operators and DBS providers represent their subscription charges transparently, accurately, and clearly. Accordingly, we propose to require cable operators and DBS providers to provide the "all-in" price for video programming service in their promotional materials and on subscribers' bills. Below, we seek comment on (i) the specifics of this proposal, (ii) existing federal, state, and local requirements related to truth-in-billing, (iii) the marketplace practices regarding advertising and billing, and (iv) our legal authority to adopt this proposal. We also seek comment on the costs and benefits of our proposal and the effects that our proposal could have on equity and inclusion.

6. *Proposal details*. We propose to require that cable operators and DBS providers aggregate the cost of the video programming service (that is, any and all amounts that the cable operator or DBS provider charges the consumer for video programming, including for broadcast retransmission consent, regional sports programming, and other programming-related fees) as a prominent single line item on subscribers' bills and in promotional materials, if they choose to advertise a price in those promotional materials.[9] We intend for this aggregate amount to include the full amount the cable operator or satellite provider charges (or intends to charge) the customer in exchange for video programming service (such as broadcast television, sports programming, and entertainment programming), but nothing more (that is, no taxes or charges unrelated to video programming).[10] The goal of this proposal is to provide consumers with the video programming service portion of their subscription payment for which they are or will be responsible in clear terms. This will allow consumers to make informed choices, including the ability to comparison shop among competing cable operators and DBS providers; compare programming costs against alternative programming providers, including streaming services; and budget for the actual amount that they will need to pay for cable or DBS video service every month, similar to the truth-in-billing rules that the Commission has in place to aid common carrier customers in understanding their bills and making informed choices in the market.[11]

7. We seek comment on our proposal. Is this proposal sufficient to ensure that subscribers and potential subscribers have accurate information about the cost for video service? To what extent are providers already advertising an "all-in" price that is inclusive of all video programming-related costs, government-imposed taxes, and any other fees? Would such materials satisfy our proposal, given that it relates only to charges for video programming? If a provider attempts to attract new subscribers with a total price (which would necessarily be higher than just the price for video programming), does that benefit outweigh the benefits of requiring uniformity for comparison shopping purposes? Are there more consumer-friendly ways that cable operators and DBS providers should be required to provide this information? Is the term "prominent" specific enough to ensure that cable operators and DBS providers present consumers with an easy-to-understand "all-in" subscription price, or do we need to provide more detail about how cable operators and DBS providers must communicate the price for service?[12] In cases

(Continued from previous page)
Phone, https://www.spectrum.com/packages; Fios TV Rate Card, https://www.verizon.com/about/sites/default/files/2022-01/December-2021-Rate-Card-WCAG-2-1.pdf.

[9] Section 602 of the Act defines video programming as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C. § 522(20).

[10] We do not propose to require that cable operators and DBS providers include equipment costs in the "all-in" price listed on promotional materials and bills, as these costs are variable for each subscriber, and some subscribers use their own equipment and therefore do not incur such charges from the provider. We seek comment on this analysis.

[11] *See* 47 CFR § 64.2400(a) (explaining that common carrier truth-in-billing rules are "intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service").

[12] For example, should we require cable operators and DBS providers to convey the information in a consistent font size or via some other measurable metric?

where the cable operator or DBS provider bundles video programming with other services like broadband Internet service, can the cable operator or DBS provider readily identify the amount of the bill that is attributable to video programming, and if not, how should our rule account for those situations? We invite comment, particularly from consumers and local franchising authorities (LFAs), about whether consumers encounter misleading promotions or receive misleading bills, and request that commenters include documents (such as advertisements and bills with redacted personal information) to support their claims.

8. Subscribers are entitled to clear, concise, and understandable information about the elements that comprise their subscription fees.[13] We also understand that cable operators and DBS providers may wish to (or in some cases are required to under 47 U.S.C. § 562) provide their subscribers and potential subscribers with information about how much of their subscription payments are attributable to specific costs of the video programming service, equipment rental, or other items that contribute to the bill. Therefore, consistent with sections 622(c) and 642 of the Act,[14] we propose to explicitly state in our rule that cable operators and DBS providers may complement the prominent aggregate cost line item with an itemized explanation of the elements that compose that aggregate cost, so long as the cable operator or DBS provider portrays the video programming-related costs as part of the all-in price for service. We seek comment on this proposal. Are there consumer benefits to receiving the cost line-item information, which would justify their inclusion on consumer bills? Would a prohibition on separate line items, other than those mandated by section 642 of the Act or permitted under 622(c) of the Act,[15] better serve the public interest,[16] and if so, could the Commission adopt such a prohibition consistent with the Act and the First Amendment?[17] Should we require cable operators and DBS providers that choose to itemize portions of their bills to provide a full accounting of how a subscriber's bill is apportioned?[18] We invite comment about rules we should consider in order to promote billing and marketing transparency.

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[13] *See* 47 CFR § 76.1619 ("[B]ills must be clear, concise and understandable.").

[14] Section 622(c) permits cable operators to identify franchisee fees, public, educational, and governmental access (PEG) fees, and other fees, taxes, assessments, or other charges imposed by the government "as a separate line item on each regular bill of each subscriber." 47 U.S.C. § 542©. Section 642(b) states that when an MVPD provides a consumer a bill in an electronic format, that bill shall include an "itemized statement that breaks down the total amount charged for or relating to the provision of the covered service by the amount charged for the provision of the service itself and the amount of all related taxes, administrative fees, equipment fees, or other charges." 47 U.S.C. § 562(b)(1). The language in our rule is intended to make clear that MVPDs may itemize their bills with even more granularity than the statute requires. We are concerned, however, that some cable operators and DBS providers may currently portray retransmission consent and sports programming costs as separate lines on "the bill in such a way as to lead a reasonable consumer to believe that the charge has been mandated by the government," which is a concern that is similar to the concerns that the Commission had with regard to common carriers when it adopted truth-in-billing rules that apply to them. *See Truth-in-Billing and Billing Format*, CG Docket Nos. 98-170; 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 at 6461, para. 27 (2005).

[15] 47 U.S.C. §§ 562(a)(1) & (b)(1) (requiring MVPDs to itemize the total amount charged for or relating to the provision of MVPD service, broken down by the amount charged for the provision of the service itself and the amount of all related taxes, administrative fees, equipment fees, or other charges), 542(c) (permitting cable operators to identify franchisee fees, public, educational, and governmental access (PEG) fees, and other fees, taxes, assessments, or other charges imposed by the government separately on consumer bills).

[16] *See* CR Reply at 2 ("Ultimately, the only way to rid the marketplace of these growing and increasingly expensive fees would be to prohibit MVPDs from charging them as additional line items in the first place.").

[17] *See infra* paras. 16-18.

[18] For example, should we require cable operators and DBS providers to explain what portion of a bill is attributable to programming costs, or other relevant costs? If so, we seek comment on which categories would best inform consumers about how their payments are apportioned.

9. We also seek comment on how to apply our proposal to different types of promotional materials. For example, should we consider adopting different requirements or exempting certain materials based on the size of the advertisement (e.g., a website or direct mail solicitation, as opposed to a pop-up ad that may be character limited)? Should we account for national, regional, or local advertisements where the actual price may not be the same for all consumers receiving the promotional materials due to market-specific price variations? Should the proposal differentiate between residential, small business, and enterprise subscribers? Additionally, should our proposal apply to existing customers with legacy plans that are no longer available? For example, in the broadband nutrition labels context, providers were not required to produce labels for plans that are no longer available for new customers. Should we consider a similar approach here? Why or why not? What is a reasonable implementation period for providers to update their systems to reflect any changes we may adopt in this proceeding? Are there any issues faced by smaller providers that would warrant additional time or a different approach? Finally, are there any other practical/implementation issues we should consider related to our proposal?

10. *Marketplace practices*. We seek comment on industry practices regarding service pricing categorization. Is there a business purpose for characterizing these service rate increases as taxes, fees, or surcharges, and if so, what is this purpose? Are certain sectors in the MVPD marketplace more prone to charging such fees? Aside from line-item fees for broadcast television, sports programming (including regional sports programming), and entertainment programming, are there other video programming-related fees that are being categorized as taxes, fees, and surcharges, instead of included in the price for video service? Have any MVPDs changed the way they bill or promote such fees since the TVPA took effect, and if so, how? Aside from the examples discussed above, are there any other industry practices that are relevant to the analysis of our proposal?

11. *Existing consumer protections*. We seek comment on whether any existing laws and protections prevent these advertising and billing practices related to charges for video programming that are listed separately on bills as taxes, fees, or surcharges. The Act provides shared authority over cable customer service issues: the Commission sets baseline customer service requirements at the federal level, and state and local governments tailor more specific customer service regulations based on their communities' needs.[19] Given the bifurcated authority we share with state and local governments, we seek comment on whether any franchising authorities have regulations or franchise agreement terms about these types of billing and advertising practices, and if so, whether they would conflict with our proposal. We seek specific input from franchising authorities about whether any regulations or franchise agreement terms have succeeded in eliminating surprise, below-the-line fees and potentially deceptive advertising, and whether those regulations or terms would make for appropriate federal standards for purposes of the practices we are considering here. What other insights can franchising authorities share regarding their experiences in assisting constituents with understanding these billing and/or advertising practices? And have other regulatory bodies addressed this practice? For example, has the Federal Trade Commission investigated any of these advertising and billing practices, and if so, what was the result of that investigation? Have any state attorneys general investigated these practices and found them to violate any state laws?[20] If so, how do such efforts contribute to our efforts in this proceeding?

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[19] 47 U.S.C. § 542; *see also Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Report and Order, 22 FCC Rcd 19633, 19646, para. 27 (2007) ("The statute's explicit language [in section 632] makes clear that Commission standards are a floor for customer service requirements, rather than a ceiling, and thus do not preclude LFAs from adopting stricter customer service requirements.").

[20] *See*, *e.g.*, Press Release, Office of Attorney General Maura Healey, Comcast to Pay $700,000 in Refunds and Cancel Debts for More Than 20,000 Massachusetts Customers to Resolve Allegations of Deceptive Advertising (Nov. 13, 2018), https://www.mass.gov/news/comcast-to-pay-700000-in-refunds-and-cancel-debts-for-more-than-20000-massachusetts-customers-to-resolve-allegations-of-deceptive-advertising.

12. *Legal authority*. We tentatively conclude that sections 335, 632, and 642 of the Act provide ample authority for this proposal.[21] We also tentatively conclude that our proposed rule is consistent with the First Amendment. We seek comment on our analysis below and invite comment on other sources of authority upon which we may rely to support our proposed rule.

13. We tentatively conclude that section 335 of the Act provides us with authority to adopt our proposed rule as it will apply to direct broadcast satellite (DBS) providers.[22] Section 335(a) provides us with authority to impose on DBS providers "public interest or other requirements for providing video programming."[23] The Commission has not relied on this authority to impose customer service obligations on DBS before, but has recognized that section 335(a) authorizes the adoption of public interest regulations.[24] We tentatively find that the rules we propose here are public interest requirements that fall squarely within our authority under section 335(a). As the Commission recently explained, "Consumer access to clear, easy-to-understand, and accurate information is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services. The same information empowers consumers to choose services that best meet their needs and match their budgets and ensure that they are not surprised by unexpected charges or service quality that falls short of their expectations."[25] These are some of the same goals that our proposed rule here is intended to accomplish. Although section 335(a) covers requirements for "*providing* video programming," we do not read that phrase to limit our authority to cover only communications that take place after a DBS provider and consumer enter into a contract. Advertising and promotional materials are often the catalyst for locking consumers into long-term contracts for the provision of video service. Our proposed rule, as it applies to advertising and other promotional materials, will ensure consumers have accurate and understandable information from the start of their subscriber relationship with the DBS provider, prevent consumer surprise down the road from unexpected charges assessed for "providing video programming," and allow each consumer to have accurate information about the monthly cost in order to choose an MVPD service that best suits his or her needs.[26] Accordingly, we tentatively conclude that we have authority under section 335(a) to apply our proposed rule to DBS providers. We seek comment on this tentative conclusion.

14. In addition, we seek comment on whether we have authority under section 4(i) of the Act to extend our proposed rule to DBS providers.[27] By doing so, we will ensure uniformity of regulation between and among cable operators (regulated under Title VI and by various state consumer protection laws and local franchising provisions) and DBS providers (under Title III), thereby preventing DBS

[21] 47 U.S.C. §§ 335, 552, 562.

[22] 47 U.S.C. § 335.

[23] 47 U.S.C. § 335(a). *See also* 47 U.S.C. § 303(v) (granting the Commission "exclusive jurisdiction to regulate the provision of direct-to-home satellite services").

[24] *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act Of 1992*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254, 23276-23279, paras. 55-61 (1998); *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act Of 1992, Direct Broadcast Satellite Public Interest Obligations Sua Sponte Reconsideration*, MM Docket No. 93-25, Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647, 5666-68, 5670-73 (2004) (exercising authority under section 335(a) to apply to DBS providers the commercial limits on children's programming and the one-channel-per-programmer limitation).

[25] *See Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, FCC 22-86, Report and Order and Further Notice of Proposed Rulemaking, 2022 WL 17100958, at *1, para. 1 (rel. Nov. 17, 2022).

[26] *See FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981) ("[T]he Commission's judgment regarding how the public interest is best served is entitled to substantial judicial deference.").

[27] 47 U.S.C. § 154(i).

providers from gaining a competitive advantage over their competitors with potentially misleading marketing materials.[28] We seek comment on this analysis.

15. Further, we tentatively conclude that section 632 of the Act provides us with authority to adopt our proposed rule as it will apply to cable operators.[29] Section 632(b) provides us authority to establish customer service standards regarding billing practices and other communications with consumers, and we have relied on that authority for decades to regulate in this area.[30] Our mandate under section 632(b) is to adopt customer service requirements regarding, among other enumerated topics, "communications between the cable operator and the subscriber (including standards governing bills and refunds)."[31] Although the statute identifies specific areas that the Commission's customer service standards must cover, section 632 describes these only as the "minimum" standards.[32] Thus, by its terms, section 632(b) gives us broad authority to adopt customer service standards that go beyond those enumerated, including outside the billing context.[33] The legislative history of section 632 provides that "[p]roblems with customer service have been at the heart of complaints about cable television," and Congress believed that "strong mandatory requirements are necessary."[34] Congress expected "the FCC, in establishing customer service standards to provide standards addressing . . . billing and collection practices; disclosure of all available service tiers, [and] prices (for those tiers and changes in service) …."[35] This language from the legislative history—particularly the expectation that the Commission would adopt standards regarding "disclosure of all available service tiers, [and] prices"—suggests that Congress granted the Commission authority over how cable operators disclose their prices to consumers, including prices for services to which consumers may have not yet subscribed. We do not read the reference to "customer service" requirements in section 632(b) to limit the Commission to regulate only post-contract communications; rather, we tentatively find that price information in advertising and other promotional materials is a natural extension of the power Congress expressly delegated to the Commission concerning billing communications between cable operators and subscribers. That is, our proposal seeks to prohibit a cable operator from promoting a potentially misleading price to entice customers to sign up for service. Thus, we tentatively conclude that requiring an "all-in" price for service is the type of "strong mandatory requirement" that Congress contemplated in section 632 and

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[28] *See, e.g., Mobile Communications Corp. v. FCC,* 77 F.3d 1399, 1405-06 (D.C. Cir. 1996) (upholding reliance on 4(i) for the Commission to adjust the terms of preferences to reduce the gulf between recipients of preferences (who would otherwise receive a free license) and other license aspirants (who, under the new auction regime, would have to pay for a license)).

[29] 47 U.S.C. § 552.

[30] *See*, *e.g.*, *Cable Service Change Notifications; Modernization of Media Regulation Initiative; Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket Nos. 19-347, 17-105, 10-71, Report and Order, 35 FCC Rcd 11052, 11057, para. 8 (2020); *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992; Consumer Protection and Customer Service*, MB Docket Nos. 92-263, Report and Order, 8 FCC Rcd 2892, 2906-7, paras 65-66 (1993) (*1993 Report and Order*).

[31] 47 U.S.C. § 552(b).

[32] *Id.*

[33] 47 U.S.C. § 552(b) ("The Commission shall … establish standards by which cable operators may fulfill their customer service requirements"); *see, e.g.*, *Cablevision v. FCC*, 649 F.3d 695, 705-706 (D.C. Cir. 2011) (by requiring mandatory "minimum" regulations, Congress established "a floor rather than a ceiling," leaving the Commission with authority to issue rules that go beyond those specified in the statute); *NCTA v. FCC*, 567 F.3d 659, 664-65 (D.C. Cir. 2009) (by describing the "minimum contents of regulation" the statutory structure indicates that "Congress had a particular manifestation of a problem in mind, but in no way expressed an unambiguous intent to limit the Commission's power solely to that version of the problem").

[34] *See* S.Rep. No. 92, 102nd Cong. 1st Sess. 1991 at 21-22, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1153.

[35] *Id.*

accordingly we have authority under section 632(b) to adopt our proposed rule as applied to cable operators. We seek comment on these tentative conclusions, and whether we should consider expanding the requirements of this proceeding to other types of MVPDs, and on what statutory basis. We also seek comment on the potential competitive effects of applying these requirements to only a subset of video programming providers.

16. As discussed above, section 642, as added by the TVPA, requires MVPDs to bill subscribers transparently when the MVPD sends an electronic bill, and specifically requires MVPDs to include in their bills "an itemized statement that breaks down the total amount charged for or relating to the provision of the covered service by the amount charged for the provision of the service itself and the amount of all related taxes, administrative fees, equipment fees, or other charges."[36] We tentatively conclude that our proposal requiring cable operators and DBS providers to provide consumers with the "all-in" price for video programming service meets this statutory directive, at least as it applies to any electronic bill the MVPD sends.[37] Specifically, our proposal to require cable operators and DBS providers to provide consumers with the total charge for all video programming would ensure that consumers are provided complete and accurate information about the "amount charged for the provision of the *service itself*," as Congress intended.[38] We tentatively find that such costs make up the charges for the "provision of the service itself" because broadcast channels, regional sports programming, and other programming track the statutory definition of "video programming" (that is, all are programming provided by, or generally considered comparable to programming provided by, a television broadcast station),[39] and video programming is, by definition, the service that an MVPD makes available for purchase.[40] We tentatively conclude that listing such costs as below-the-line fees potentially results in confusion for consumers about the "amount charged for the provision of the service itself," because the word "itself" suggests a single charge for the total service rather than one charge for one portion of the service and then a separate charge for other programming provided. This contravenes Congress's core purpose for enacting the legislation: as noted above, the legislative history of this section indicates that Congress intended to curb MVPDs' practice of charging "unexpected and confusing fees," but recent press reports suggest that this practice continues.[41] We observe that the statute further provides for the disclosure of a second group of costs on electronic bills –*i.e.,* "the amount of all related taxes, administrative fees, equipment fees, or other charges."[42] However, we do not believe that costs related to video programming fall within this category. Such costs are not "taxes," "administrative fees," "equipment fees," or "other charges" because the Act defines video programming as the specific service that customers buy from MVPDs—in other words, the "service itself."[43] Thus, the terms "taxes,"

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[36] 47 U.S.C. § 562(b)(1) (emphasis added). The statute defines "covered service" as "service provided by a multichannel video programming distributer [sic], to the extent such distributor is acting as a multichannel video programming distributor." 47 U.S.C. § 562(d)(3).

[37] As we explain in paragraphs 12 and 14 above, we believe that sections 335 and 632 alone provide authority for our proposed rule. As we explain in this paragraph, section 642 provides additional and independent authority over electronic bills.

[38] 47 U.S.C. § 562(b)(1) (emphasis added).

[39] 47 U.S.C. § 522(20) ("the term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station").

[40] 47 U.S.C. § 522(13) ("the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by sub scribers or customers, multiple channels of video programming").

[41] *See supra* paras. 2 and 4.

[42] 47 U.S.C. § 562(b)(1).

[43] 47 U.S.C. § 522(13).

"administrative fees," "equipment fees," or "other charges" cannot reasonably include separate charges for various types of video programming (e.g., amounts paid for retransmission consent rights or rights to transmit regional sports programming or any other programming).[44] Based on this analysis, we tentatively conclude that our proposed rule regarding pricing disclosures is a reasonable construction of these statutory directives and is authorized under the TVPA.[45] We seek comment on these tentative conclusions.

17. We also tentatively conclude that our proposed rule is consistent with the First Amendment. As the Commission has explained in other contexts where it adopted truth-in-billing, advertising, and labeling rules, "[c]ommercial speech that is misleading is not protected speech and may be prohibited," and "commercial speech that is only potentially misleading may be restricted if the restrictions directly advance a substantial governmental interest and are no more extensive than necessary to serve that interest."[46] To what extent is the speech at issue here—portrayal that the cost of video service is a certain amount when the actual amount for the video service is potentially much higher—misleading? Is it categorically misleading, such that is not considered protected speech? Or is it only potentially misleading? Is there a credible argument that this practice is not misleading at all?

18. If a reviewing court were to find that the speech is misleading, the constitutional analysis would end there because the proposed rule simply prevents misleading commercial speech, which is afforded no protection under the First Amendment.[47] However, even if our proposed rule seeks to regulate only potentially misleading speech, regulations involving commercial speech[48] that require a disclosure of factual information (such as the disclosure of the total cost for video programming service that our proposed rule would require) are entitled to more lenient review from courts than regulations that limit speech.[49] That is, under Supreme Court precedent, a speaker's commercial speech rights are adequately protected as long as disclosure requirements are reasonably related to the government's

[44] We note that section 622(c) permits cable operators to identify, "as a separate line item on each regular bill of each subscriber, . . . [t]he amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels." 47 U.S.C. § 542(c). As noted in paragraph 5 above, we drafted our proposed rule to be consistent with this rule section by making explicit that cable operators and DBS providers may list discrete costs that make up the "all-in" cost for video programming.

[45] Section 642's silence with respect to the Commission's rulemaking role does not remove such authority. The courts have previously affirmed the Commission's authority to promulgate rules implementing a section of the Communications Act even where Congress never explicitly or implicitly delegated power to the Commission to interpret that particular statutory section. *See Alliance for Community Media v. FCC,* 529 F.3d 763, 773 (6th Cir. 2008) (affirming the Commission's jurisdiction to promulgate rules implementing section 621(a)(1) of the Communications Act even in the absence of an explicit delegation of rulemaking power to the Commission in that statutory section).

[46] *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7530-31, para. 60 (1999) (citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-564, 566 (1980) (*Central Hudson*) ("The government may ban forms of communication more likely to deceive the public than to inform it."")). *See also Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86, 2022 WL 17100958, para. 123 (2022).

[47] *Central Hudson,* 447 U.S. at 563 ("there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity" and "[t]he government may ban forms of communication more likely to deceive the public than to inform it") (citations omitted).

[48] *Id.* at 561 (explaining "commercial speech" as "expression related solely to the economic interests of the speaker and its audience"). Information about the price of service in bills and promotional materials clearly constitutes "commercial speech." We seek comment on this tentative conclusion.

[49] *See Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651-52 (1985) (*Zauderer*); *see also Milavetz, Gallop, & Milavetz v. U.S.*, 559 U.S. 229, 249-50 (2010).

interest in preventing deception of consumers.[50] That standard is met here as our proposed rule would simply require cable operators and DBS providers to disclose to consumers in bills and promotional materials an accurate statement of the total cost for video programming service, and the disclosure requirement is reasonably related to the government's interest in preventing deception of consumers. As was the case in *Zauderer,* here, a cable operator's or DBS provider's constitutionally protected interest in *not* providing the required information is "minimal."[51] In addition, the rule does not prevent cable operators and DBS providers from conveying any additional information. We seek comment on this analysis.

19. Assuming, for the sake of argument, that our proposed rule would be subject to the more stringent test of commercial speech regulation (i.e., intermediate scrutiny), we still believe that the rule passes that three-prong test that the Supreme Court established in *Central Hudson*: first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be "narrowly drawn."[52] Our proposed rule passes this test. First, we have a substantial interest in making sure that consumers can identify the full cost of video programming to which they subscribe so that they can understand the price they are being charged for the service as well as make informed purchasing decisions as they consider competing cable and DBS service options. Second, our proposed rule would advance that interest by requiring cable operators and DBS providers to identify the cost for video programming as a single, prominent line-item on consumer bills and promotional materials, which would allow consumers to identify the full cost of video programming. Finally, our proposal is narrowly drawn and proportionate to the substantial interest we aim to promote: the proposed rule would permit cable operators and DBS providers to identify elements that comprise the total charge for video programming and require only that they present information about the total cost for video programming uniformly. We seek comment on this analysis.

20. *Cost/Benefit Analysis*. We seek comment on the benefits and costs associated with adopting the proposed rules. In addition to the consumer benefits discussed above, including promotion of competition, are there also benefits to industry, such as leveling the playing field for cable operators and DBS providers that do offer transparent pricing? We also seek comment on any potential costs that would be imposed on consumers or cable operators and DBS providers if we adopt the proposals contained in this NPRM. Would a truth-in-billing requirement impose undue burdens on small cable operators, as that term is defined by the Small Business Administration?[53] Are there ways to limit any potential compliance burdens on providers, including small cable operators, while still achieving the benefits to consumers discussed above? Comments should be accompanied by specific data and analysis supporting claimed costs and benefits. We seek comment on these issues and any other issues related to the regulation of below-the-line fees and truth-in-billing requirements.

21. *Digital Equity and Inclusion*. Finally, the Commission, as part of its continuing effort to advance digital equity for all,[54] 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

[50] *Zauderer,* 471 U.S. at 651.

[51] *Id.*

[52] *Central Hudson*, 447 U.S. at 566.

[53] *See* 13 CFR § 121.201, NAICS Code 516210 (classifying firms with annual receipts of $47 million or less as small).

[54] 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.

affected by persistent poverty or inequality, invites comment on any equity-related considerations[55] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

22. *Ex Parte Rules - Permit-But-Disclose*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[56] 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.

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

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

[55] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

[56] 47 CFR §§ 1.1200 *et seq.*

- 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.[57]

- 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.

24. *Initial Regulatory Flexibility Act Analysis*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[58] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[59] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[60]

25. With respect to this Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA) under the RFA is contained in Appendix B. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.

26. *Paperwork Reduction Act*. This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

27. *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).

28. *Additional Information*. For additional information on this proceeding, please contact Brendan Murray, Media Bureau, Policy Division at Brendan.Murray@fcc.gov or (202) 418-1573.

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

[58] 5 U.S.C. § 603.

[59] *Id*. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[60] 15 U.S.C. § 632.

V. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 303(v), 335(a), 632(b), and 642 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(v), 335(a), 552(b), and 562, this Notice of Proposed Rulemaking **IS ADOPTED.**

30. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Proposed Rules

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 is amended to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 335, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 562, 571, 572, 573.

2. Add § 76.310 to read as follows:

47 CFR § 76.310. Truth in billing and advertising.

Cable operators and DBS providers shall aggregate the cost of video programming that they provide as a prominent single line item on subscribers' bills and in any promotional materials. Cable operators and DBS providers may complement the aggregate line item with an itemized explanation of the elements that compose that single line item.

APPENDIX B
Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *Notice of Proposed Rulemaking* (*NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. Sections 335 and 632 of the Communications Act of 1934, as amended (the Act), authorize the Commission to adopt public interest regulations for direct broadcast satellite (DBS) and direct the Commission to adopt cable customer service requirements, respectively.[4] In 2019, Congress adopted the Television Viewer Protection Act of 2019 (TVPA), which bolstered the consumer protection provisions of the Act by adding specific consumer protections.[5] The TVPA revised the Act to add section 642, which, among other things, requires greater transparency in subscribers' bills.[6] As it considered this legislation, Congress expressed specific concern that consumers face "unexpected and confusing fees when purchasing video programming," including "fees for broadcast TV," and noted that the practice of charging these fees began in the late 2000s.[7] In 2021, the Media Bureau sought comment on the steps multichannel video programming distributors (MVPDs) have taken to implement the TVPA requirements and on whether consumers found those steps effective in furthering Congress's goal of protecting consumers when purchasing MVPD or broadband service.[8] In response to that PN, Consumer Reports

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] 47 U.S.C. §§ 335, 552.

[5] The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA was enacted as Title X of the "Further Consolidated Appropriations Act, 2020" (H.R. 1865, 116th Cong.).

[6] 47 U.S.C. § 562. Section 642 provides four main areas of consumer protection related to billing: (1) before entering into a contract with a consumer, an MVPD must provide the consumer the total monthly charge for MVPD service, whether offered individually or as part of a bundled service, including any related administrative fees, equipment fees, or other charges, (2) not later than 24 hours after contracting with a consumer, an MVPD must provide the total monthly charge that a consumer can expect to pay and permit the consumer to cancel without fee or penalty for 24 hours, (3) with respect to electronic bills, MVPDs must include an itemized statement that breaks down the total amount charged for MVPD service and the amount of all related taxes, administrative fees, equipment fees, or other charges; the termination date of the contract for service between the consumer and the provider; and the termination date of any applicable promotional discount, and (4) MVPDs and fixed broadband Internet service providers must not charge a consumer for using their own equipment and also must not charge lease or rental fees to subscribers to whom they do not provide equipment. *Id*.

[7] H.R. Rep 116–329, at 6 (2019). *See also* Consumer Reports, How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service, https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf (2019) (detailing the cable industry's practice of charging "hidden fees" beyond the rates that they advertise and promote).

[8] *Media Bureau Seeks Comment on Implementation of the Television Viewer Protection Act of 2019*, Public Notice, DA 21-1610, 2021 WL 6063052 (MB Dec. 20, 2021). Commenters in the public notice docket should update and

(continued….)

commented that below-the-line fees, "which are solely the creation of the provider (versus regulatory fees that are passed on to the consumer)[,] made up the bulk" of costs that are added to advertised rates and MVPD subscribers' bills.[9] It appears that since adoption of the TVPA, the practice of charging subscribers unexpected "fees" (for example, for broadcast television programming and regional sports programming listed separately from the monthly subscription rate for video programming service) that are actually charges for the video programming service for which the subscriber pays, has continued.[10] Moreover, websites, advertisements, and other promotional materials may advertise a top-line price that does not note prominently the mandatory programming costs that make up the service until the customer signs up for service. For example, those materials use a different font size (often in fine print) and separate from the proclaimed monthly subscription fee amounts extra "fees" designated by the provider that consumers will also need to pay for video programming that they will receive.[11]

3. Some MVPDs charge subscribers an assortment of unexpected fees that are not identified as a cost attributable to the video programming service that they sell, even though those fees are for parts of that video programming service.[12] This categorization can potentially be misleading and interpreted as a government-imposed tax or fee, instead of a company-imposed service fee increase. This practice can also make it difficult for consumers to compare the service prices of competing video service providers. To make sure that consumers have the information they need to budget for video programming service and compare competitive services, we propose to require cable operators and DBS providers to identify all costs attributable to video programming service as a single line item on subscribers' bills and in promotional materials.

B. Legal Basis

4. The proposed action is authorized under Sections §§ 1, 4(i), 303(v), 335(a) and 632(b), 642 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(v), 335(a) and 552(b), and 562.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.[13] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business,"

(Continued from previous page)
refile their comments from the public notice docket into the docket for this proceeding (MB Docket No. 23-203), to the extent they are relevant.

[9] *See* Consumer Reports Reply Comments, MB Docket No. 21-501, at 2 (filed Mar. 7, 2022) (CR Reply).

[10] *Compare, e.g.*, Sharon Lurye, *Comcast releases rate changes for 2016*, Philly Voice, Nov. 24, 2015, https://www.phillyvoice.com/comcast-releases-rate-changes-2016/ *with* Erin McCarthy, *Comcast's rates are increasing again. Here's what to expect*, The Philadelphia Inquirer, Dec. 5, 2022, https://www.inquirer.com/business/comcast/comcast-rate-increase-internet-broadcast-sports-fees-20221205.html (indicating that in Philadelphia, "broadcast TV" and "regional sports" fees increased from $48 per year in in 2014 to over $415 per year in 2023).

[11] *See*, *e.g.*, Build Your Plan with Xfinity for Internet, TV, Mobile and Security, https://www.xfinity.com/digital/offers/plan-builder; Spectrum Packages – Best Bundles for Cable TV, Internet & Phone, https://www.spectrum.com/packages; Fios TV Rate Card, https://www.verizon.com/about/sites/default/files/2022-01/December-2021-Rate-Card-WCAG-2-1.pdf.

[12] H.R. Rep 116–329, at 6 (2019).

[13] 5 U.S.C. § 603(b)(3).

"small organization," and "small governmental jurisdiction."[14] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).[15] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[16] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[17] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[18] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[19] The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small.[20] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[21] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[22] Based on this data, the Commission estimates that a majority of firms in this industry are small.

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[14] 5 U.S.C. § 601(6); *see infra* note 15 (explaining the definition of "small business" under 5 U.S.C. § 601(3)); *see* 5 U.S.C. § 601(4) (defining "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register"); 5 U.S.C. § 601(5) (defining "small governmental jurisdiction" as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register").

[15] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

[16] 15 U.S.C. § 632(a)(1)-(2)(A).

[17] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[18] *Id.*

[19] *Id.*

[20] *See* 13 CFR § 121.201, NAICS Code 515210.

[21] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[22] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein.

(continued….)

7. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[23] Based on industry data, there are about 420 cable companies in the U.S.[24] Of these, only seven have more than 400,000 subscribers.[25] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[26] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[27] Of these, about 639 have more than 15,000 subscribers.[28] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

8. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[29] 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.[30] Based on industry data, only six cable system operators have more than 677,000 subscribers.[31] 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.[32] Therefore, we are unable at this time to estimate with greater precision the number of cable

(Continued from previous page)
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.

[23] 47 CFR § 76.901(d).

[24] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[25] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[26] 47 CFR § 76.901(c).

[27] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[28] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[29] 47 U.S.C. § 543(m)(2).

[30] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

[31] 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).

[32] 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).

system operators that would qualify as small cable operators under the definition in the Communications Act.

9. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[33] Transmission facilities may be based on a single technology or combination of technologies.[34] 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.[35] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[36] 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 3,054 firms operated in this industry for the entire year.[38] Of this number, 2,964 firms operated with fewer than 250 employees.[39] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[40] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. *Reporting Requirements.* The *NPRM* proposes to require cable operators and DBS providers to state the makeup of consumers' bills transparently, accurately, and clearly. The *NPRM* does not propose any new or modified recordkeeping or other compliance requirements.

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[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] *See id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[36] *Id*.

[37] *See* 13 CFR § 121.201, NAICS Code 517311.

[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] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5*,* 32 FCC Rcd 568, 595 (Jan. 17, 2017).

11. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether, if adopted, amending the cable operator customer service obligations will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. To help the Commission more fully evaluate the cost of compliance, in the *NPRM* we seek comment on whether a truth-in-billing requirement would impose undue burdens on small entities. We also seek comment on ways to limit any potential compliance burdens on small entities, while still achieving the benefits to consumers of clearer, non-misleading bills and advertisements. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits. In addition, we seek comment on these issues and any other issues related to the regulation of below-the-line fees and truth-in-billing requirements. We expect the comments that we receive from the parties in the proceeding, including cost and benefit analyses, to help the Commission identify and evaluate compliance costs and burdens for small entities that may result from the matters discussed in the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[41]

13. The *NPRM* seeks comment on whether cable operators and DBS providers have changed the way they bill or promote such fees since the TVPA took effect, and if so, how. We ask whether there is a business purpose for characterizing these service rate increases as taxes, fees, or surcharges, and whether certain sectors in the MVPD marketplace more prone to charging such fees. We also ask whether any franchising authorities have regulations or franchise agreement terms about these types of billing and advertising practices, and if so, whether they would conflict with our proposal. Consistent with section 642 of the Act, the *NPRM* proposes to explicitly state in our rule that cable operators and DBS providers may complement the prominent aggregate cost line item with an itemized explanation of the elements that compose that aggregate cost, so long as the cable operator or DBS provider portrays the video programming-related costs as part of the all-in price for service. There may be consumer benefits to allowing cable operators and DBS providers to provide their subscribers and potential subscribers with information about how much of their subscription payments are attributable to specific elements of the video programming service, equipment rental, or other elements that contribute to the bill.

14. We considered alternatives to whether our proposal to provide the "all-in" price for service in their promotional materials and on subscribers' bills is sufficient to ensure that subscribers and potential subscribers have accurate information about the cost for video service. We considered whether there are more consumer-friendly ways that cable operators and DBS providers should be required to provide this information and whether the term "prominent" is specific enough to ensure that cable operators and DBS providers present consumers with an easy-to-understand "all-in" subscription price, or whether we need to provide more detail about how cable operators and DBS providers must communicate the price for service and seek comment on these matters. We also considered whether, aside from line-item fees for broadcast television, sports programming (including regional sports programming), and entertainment programming, there are other video programming-related fees that are being categorized as taxes, fees, and surcharges, instead of included in the price for video service. We also considered whether

[41] *See* 5 U.S.C. § 603(c)(1)-(4).

are there also benefits to industry, such as leveling the playing field for MVPDs that do offer transparent pricing.

15. We expect to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the *NPRM*. Our evaluation of this information will shape the final alternatives we consider, the final conclusion we reach, and any final actions we ultimately take in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

16. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *All-In Pricing for Cable and Satellite Television Service*, MB Docket No. 23-203, Notice of Proposed Rulemaking.

Consumers deserve to know exactly what they are paying for when they sign up for a cable or direct broadcast satellite subscription. No one likes surprises on their bill. The advertised price for a service should be the price you pay when your bill arrives, rather than hide a bunch of junk fees that are separate from the top-line service price.

Increases in programming costs shouldn't be described as a tax, fee, or surcharge. The "all-in" pricing format we propose today would allow consumers to make informed choices by letting them more easily comparison shop among competing providers and evaluate programming costs against alternative programming providers, including streaming services.

Not only would this proposal reduce cost confusion and make it easier for consumers to compare services, but it would also increase competition among cable and broadcast satellite providers through improved price transparency.

Like our prior work to adopt a new Broadband Nutrition Label, which requires broadband providers to display easy-to-understand labels to allow consumers to comparison shop for broadband services, this is another step in our initiative to improve price transparency and competition. I look forward to the record that develops and then moving ahead with policies to protect and inform consumers by ensuring up-front and all-in pricing on their cable and satellite services.

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

In the Matter of	)	
	)	
Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard	)	GN Docket No. 16-142
	)	
	)	

THIRD REPORT AND ORDER AND
FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: June 20, 2023 **Released: June 23, 2023**

Comment Date: [60 days after date of publication in the Federal Register]
Reply Comment Date: [90 days after date of publication in the Federal Register]

By the Commission:

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I. INTRODUCTION

1. In this Third Report and Order in the Next Generation Broadcast Television (ATSC 3.0 or Next Gen TV) docket, we make changes to our Next Gen TV rules designed to preserve over-the-air (OTA) television viewers' access to the widest possible range of programming while also supporting television broadcasters' transition to the next generation of broadcast television technology. These

changes are based on the records collected in response to both the *Next Gen TV Multicast Licensing FNPRM*[1] and the *Sunsets FNPRM*.[2] We generally adopt our proposal in the *Next Gen TV Multicast Licensing FNPRM* to allow a Next Gen TV station[3] to seek modification of its license[4] to include certain of its non-primary video programming streams (multicast streams)[5] that are aired on "host" stations[6] during a transitional period. In adopting this proposal, we follow the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on "host" station facilities.[7] We also extend the sunsets of, and thus retain in effect until at least July 17, 2027, the substantially similar rule for simulcast streams and the requirement to comply with the ATSC A/322 standard on primary 3.0 streams.[8]

2. Given that Next Gen TV stations must, without any additional allocation of spectrum, continue serving ATSC 1.0 viewers while voluntarily transitioning to ATSC 3.0,[9] we seek to take actions that will minimize viewer disruption as much as possible during this limited transition period.

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[1] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 16088, at para. 1 (2021) (*Next Gen TV Multicast Licensing FNPRM* or *Multicast Licensing FNPRM*).

[2] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Third Further Notice of Proposed Rulemaking, FCC 22-47, 2022 WL 2290237 at *1, para. 1 (rel. June 22, 2022) (*Sunsets FNPRM*).

[3] By "Next Gen TV" broadcaster or station, we mean a television broadcaster or station that has obtained Commission approval and commenced broadcasting its signal using the ATSC 3.0 standard in its local market. A station can deploy ATSC 3.0 service either by converting its own facility to ATSC 3.0 or by airing its ATSC 3.0 signal(s) on a station in its local market that has converted its facility to ATSC 3.0 (which we refer to as an ATSC 3.0 "host" station). For purposes of this Report and Order, a station's "own" channel or facility refers to the channel and facility on which it operated prior to its transition to ATSC 3.0 (even if it has already converted to operate in 3.0). We use this term to distinguish between operations on this facility and a station's operations as a guest on a host facility.

[4] While in this document we may refer to the licensing of multicast streams, we clarify that we are establishing a process to license a guest Next Gen TV station capacity on a host's channel for the purpose of airing one or more guest multicast streams. Consistent with the *Next Gen TV Multicast Licensing FNPRM*, each portion of a host channel that is being licensed by a guest station to air one or more programming streams will be separately authorized channels under the originating (guest) broadcaster's single, unified license. *See infra* Section III.H ("Licensing"). *See also Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9953-54, para. 48 (2017) (*Next Gen TV First Report and Order*) (stating that "the ATSC 1.0 and ATSC 3.0 signals of a Next Gen TV broadcaster will be two separately authorized companion channels under the broadcaster's single, unified license").

[5] For purposes of this Report and Order, "multicast" stream(s) refers to a TV broadcast station's *non-primary* video programming stream(s); that is, stream(s) other than the station's primary video programming stream.

[6] A "host" station is one whose facilities are being used to transmit programming originated by another station (*i.e.*, "guest") as part of a local simulcasting arrangement.

[7] We note that our rules do not prohibit the use of private contractual arrangements for partner stations to air their multicast streams. For regulatory compliance purposes, such streams would be considered multicast streams of the host partner station, not the originator (guest) station.

[8] The Commission will initiate a review approximately one year before these rules are set to expire to seek comment on whether they should be extended based on marketplace conditions at that time.

[9] *Next Gen TV First Report and Order*, 32 FCC Rcd at 9939, para. 16 ("To avoid either forcing viewers to acquire new equipment or depriving them of television service, it is critical that broadcasters continue to provide service using the current ATSC 1.0 standard to deliver DTV service while the marketplace adopts devices compatible with the new 3.0 transmission standard.").

Specifically, this Report and Order seeks to facilitate and encourage partnerships that will minimize potential disruptions by permitting stations in a market to work together to preserve viewers' access to ATSC 1.0-formatted programming during the transition. We intend simultaneously to facilitate broadcasters' voluntary transition to ATSC 3.0, which can provide consumers with the benefit of new and innovative services, while protecting the vast majority of over-the-air TV viewers who continue to rely on 1.0 equipment.

3. In the accompanying Fourth Further Notice of Proposed Rulemaking (*RAND FNPRM*), we seek to further our understanding of the current marketplace for ATSC 3.0 Standard Essential Patents (SEPs) and the ability of third parties to develop products that rely upon them. We also seek comment on the impact on consumers if the Commission were to adopt, or not adopt, rules to require essential patent holders in 3.0 technology to commit to licensing them on reasonable and non-discriminatory (RAND) terms.

II. BACKGROUND

4. In 2017, the Commission authorized television broadcasters to use the Next Gen TV transmission standard, also called "ATSC 3.0" or "3.0," on a voluntary, market-driven basis.[10] The Commission required that broadcasters voluntarily deploying ATSC 3.0 service must, with very limited exceptions,[11] continue to air at least their primary streams using the current-generation TV transmission standard, also called "ATSC 1.0" or "1.0," to their viewers through "local simulcasting."[12] Under the Commission's rules, Next Gen TV broadcasters are encouraged, but not required, to simulcast their 3.0 multicast streams in a 1.0 format.[13]

5. The Commission found that the local simulcasting requirement is crucial to deploying Next Gen TV service in a manner that minimizes viewer disruption. The Next Gen TV standard is not backward-compatible with existing TV sets or receivers, which have only ATSC 1.0 and analog tuners.[14] Accordingly, viewers will be unable to watch ATSC 3.0 transmissions on their existing televisions

[10] *Id.* at 9931, para. 1; *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Report and Order and Order on Reconsideration, 35 FCC Rcd 6793, 6794, para. 2 & n.4 (2020) (*Next Gen TV Second Report and Order*). Next Gen TV is the newest broadcast TV transmission standard, developed by the Advanced Television Systems Committee (ATSC), which promises to enable broadcasters to deliver an array of new video and non-video services and enhanced content features to consumers. *See* ATSC, *Spotlight ATSC 3.0*, https://www.atsc.org/nextgen-tv/ (last visited June 22, 2021) (listing key features of 3.0 and providing a video describing the 3.0 service). ATSC 3.0 merges the capabilities of over-the-air (OTA) broadcasting with the broadband viewing and information delivery methods of the Internet, using the same 6 MHz channels presently allocated for TV service. As 3.0 proponents have previously explained to the Commission, the greater spectral capacity of the new standard and its Internet-Protocol delivery component will allow broadcasters to provide consumers with a higher quality television viewing experience, such as ultra-high-definition (UHD) picture resolutions and immersive audio. It also has the potential to enable broadcasters to reach viewers on both home and mobile screens. In addition, ATSC 3.0 will allow broadcasters to offer enhanced public safety capabilities, such as geo-targeting of emergency alerts to tailor information to particular communities and emergency alerting capable of waking up sleeping devices to warn consumers of imminent emergencies, as well as greater accessibility options, localized content, and interactive educational children's content. *See Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Report and Order, 35 FCC Rcd 14492, 14493, para. 4 (2020) (*Broadcast Internet Order*); *Next Gen TV First Report and Order*, 32 FCC Rcd at 9933-34, para. 4.

[11] LPTV and TV translator stations may deploy ATSC 3.0 service without providing an ATSC 1.0 simulcast signal. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9950, para. 40; 47 CFR § 74.782(c). In addition, full power and Class A stations may request a waiver of the simulcast requirements. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9953, para. 46.

[12] *Id*. at 9931, para. 1. *See infra* para. 5.

[13] *Id*. at 9937-38, para. 13 & n.40.

[14] *Id*. at 9939, para. 15.

without additional equipment. Thus, it is critical that Next Gen TV broadcasters continue to provide service using the current ATSC 1.0 standard while the consumer equipment marketplace adopts televisions and converter devices compatible with the new 3.0 transmission standard. This is necessary in order to avoid forcing viewers to acquire expensive new equipment immediately or depriving them of their local television service during the transition.[15] Because a TV station cannot, as a technical matter, simultaneously broadcast in both 1.0 and 3.0 format from the same facility on the same physical channel, local simulcasting must be effectuated through voluntary partnerships that broadcasters seeking to provide Next Gen TV service enter into with other broadcasters in their local markets.[16] A Next Gen TV station must partner with another television station (*i.e.*, a temporary "host" station) in its local market to either: (1) air an ATSC 3.0 channel at the temporary host's facility, while using its original facility to continue to provide an ATSC 1.0 simulcast channel, or (2) air an ATSC 1.0 simulcast channel at the temporary host's facility, while converting its original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.[17] A Next Gen TV station's ATSC 1.0 "simulcast" must be "substantially similar" to that of the primary video programming stream on the ATSC 3.0 channel.[18] Substantially similar "means that the programming must be the same except for advertisements, promotions for upcoming programs, and programming features that are based on the enhanced capabilities of ATSC 3.0."[19]

6. The process for considering applications to deploy ATSC 3.0 service includes coverage requirements for a Next Gen TV station's ATSC 1.0 simulcast signal.[20] The Commission sought to minimize disruption to viewers resulting from the voluntary deployment of ATSC 3.0 while recognizing that if a station moves its ATSC 1.0 signal to a partner simulcast host station with a different transmitter location, some OTA viewers may no longer be able to receive the station's 1.0 signal.[21] Among other obligations, the Commission requires the Next Gen TV station to select a partner 1.0 simulcast host

[15] *Id*. at 9939, paras. 15-16. *See infra* note 180 (indicating that—as of August 8, 2022—the lowest cost 3.0 TV set is available at retail for $549.00 and the lowest cost separate 3.0 receiver (gateway device) is available at retail for $199).

[16] *Next Gen TV Second Report and Order*, 35 FCC Rcd at 6794, para. 3; *Next Gen TV First Report and Order*, 32 FCC Rcd at 9937, para. 12; 47 CFR § 73.624(b)(3).

[17] *Next Gen TV First Report and Order*, 32 FCC Rcd at 9937, para. 12; 47 CFR § 73.3801 (simulcasting rules for full power TV stations). In either case, a Next Gen TV broadcaster must simulcast the primary video programming stream of its ATSC 3.0 channel in an ATSC 1.0 format, so that viewers will continue to receive ATSC 1.0 service. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9937, para. 12; 47 CFR § 73.3801(b) (simulcasting requirement). By the time the transition is complete, any temporary authority granted for local simulcasting will expire, and a station will once again be required to air all of its licensed programming on its own single channel. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9938, n.46 and accompanying text. In June 2022, the Commission initiated a proceeding to consider the state of the transition and the Next Gen TV marketplace. *See Sunsets FNPRM*, 2022 WL 2290237 at *1, para. 1.

[18] *Next Gen TV First Report and Order*, 32 FCC Rcd at 9942-44, paras. 22-24; 47 CFR § 73.3801(b).

[19] 47 CFR § 73.3801(b)(1); *see also id.* at §§ 73.6029(b)(1), 74.782(b)(1).

[20] *Id*. at 9945-46, paras. 29-31; 47 CFR § 73.3801(c). A Next Gen TV broadcaster must file an application and obtain Commission approval before a 1.0 simulcast channel or a 3.0 channel aired on a partner host station can go on the air, as well as before an existing 1.0 station can convert to 3.0 operation or back to 1.0 operation. *Id*. at 9939, para. 48; 47 CFR § 73.3801(f)(2).

[21] *Next Gen TV First Report and Order*, 32 FCC Rcd at 9946, para. 30 ("By requiring stations to continue to provide an ATSC 1.0 signal that covers their current community of license and encouraging them to keep coverage loss to 5% or less of the population currently receiving a 1.0 signal over the air, we will limit the number of current viewers and MVPD headends that will lose access to the OTA 1.0 signal as a result of local simulcasting.").

station that is assigned to its same designated market area (DMA) and from which it will continue to provide ATSC 1.0 simulcast service to its entire community of license.[22]

A. Multicast Licensing

7. According to the National Association of Broadcasters (NAB), as ATSC 3.0 deployment has progressed, broadcasters interested in transitioning to ATSC 3.0 while maintaining their current programming streams have faced challenges finding partner stations willing to host broadcasters' multicast streams through private contractual agreements.[23] Moreover, NAB states that Next Gen TV broadcasters want to "continue to serve audiences with multicast streams," even though they are not required to do so.[24] NAB contends that stations are hesitant to serve as hosts pursuant to private arrangements due to concerns about regulatory liability and whether such private multicast agreements are expressly permitted under the Commission's ATSC 3.0 rules.[25] Moreover, NAB observes that "a purely contractual approach [to ATSC 3.0 deployment-related sharing arrangements] would exclude noncommercial stations from participating in sharing arrangements to host commercial multicast streams" under section 399B of the of the Communications Act.[26] In addition, NAB asserts that if broadcasters execute hosting agreements for their multicast streams that are not reflected on the license of the originating station, "the Commission might not retain enforcement authority" over the originating station with respect to that guest stream.[27]

8. Because our existing rules do not address a guest station's licensing of a host station's spectrum to air multicast streams, even with regard to the host that is airing the guest station's primary stream, the Media Bureau implemented an interim process by which a Next Gen TV broadcaster that has converted or is seeking to convert its facility to 3.0 can seek special temporary authority (STA) to air 1.0 multicast streams on a host station.[28] Just as under the current rules for primary guest streams, these STAs permit a guest multicast stream to be treated as if it originated from the Next Gen TV broadcaster's facility, as opposed to the host station's facility, for purposes of the Commission's rules and the Communications Act.[29] The STAs granted to date are valid for six months but may be renewed. This

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[22] *Id*. at 9945-46, paras. 29-31. *See* 47 CFR § 73.3801(c). Because Class A TV stations do not have a community of license, the Commission established a coverage requirement based on contour overlap and mileage. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9946-47, para. 32. *See* 47 CFR § 73.6029(c). Some stations may not be formally assigned by Nielsen to DMAs. As stated in the *Next Gen TV First Report and Order*, "we will consider stations that are not assigned to a DMA by Nielsen to be assigned to the DMA in which they are located." *Next Gen TV First Report and Order*, 32 FCC Rcd at 9946, n.93.

[23] Letter from Patrick McFadden, Associate General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Mar. 19, 2020) (NAB Mar. 19 *Ex Parte* Letter); Letter from Patrick McFadden, Associate General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Jan. 27, 2020) (NAB Jan. 27 *Ex Parte* Letter).

[24] Petition at 2.

[25] NAB Mar. 19 *Ex Parte* Letter at 1-2; NAB Jan. 27 *Ex Parte* Letter at 1-2.

[26] Petition at 3 and 5-6. *See also* 47 U.S.C. § 399B(b)(2) (prohibiting noncommercial stations from making their "facilities available to any person for the broadcasting of any advertisement").

[27] NAB Jan. 27 *Ex Parte* Letter at 1-2. The NAB asserts that these issues "could create complex contractual indemnification concerns that could complicate deployment," particularly for NCE stations, "some of which are restricted or prohibited entirely from agreeing to indemnification." NAB Jan. 27 *Ex Parte* Letter at 2; NAB Mar. 19 *Ex Parte* Letter at 2.

[28] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16091, para. 6.

[29] *Id*.

case-by-case process is resource-intensive for both the Commission and broadcasters, in addition to making it difficult for potential viewers to track where streams are being hosted.[30]

9. In November 2020, NAB filed a Petition for Declaratory Ruling and Petition for Rulemaking (Petition) asking the Commission to allow Next Gen TV stations to seek modification of their licenses to include certain of their multicast streams that are aired in a different service on host stations during the period of transition to 3.0.[31] In response to the NAB Petition, we adopted the *Next Gen TV Multicast Licensing FNPRM*,[32] which:

- Proposed to license a Next Gen TV broadcaster's simulcast multicast stream(s) either together with its primary stream on the primary simulcast host or on different simulcast host(s).[33] A "simulcast multicast stream" in the context of this proceeding is a multicast stream that is aired by a Next Gen TV station, in substantially similar fashion,[34] in both 1.0 and 3.0 formats throughout the mandatory local simulcasting period.[35]
- Proposed to license a Next Gen TV broadcaster's "non-simulcast" 1.0 multicast stream(s) either together with its primary stream on its primary 1.0 host or on different 1.0 simulcast host(s).[36] A "non-simulcast 1.0 multicast stream" in the context of this proceeding is a multicast stream that is aired only in 1.0 format and not in 3.0 format.[37]

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[30] *Id*.

[31] *See generally* Petition for Declaratory Ruling and Petition for Rulemaking of the National Association of Broadcasters, GN Docket No. 16-142 (filed Nov. 9, 2020) (Petition).

[32] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd 16088. Comments were due February 11, 2022 and reply comments were due March 14, 2022. *Comment and Reply Comment Dates Set for Next Gen TV Multicast Licensing FNPRM*, GN Docket No. 16-142, Public Notice, 36 FCC Rcd 17142 (MB 2021).

[33] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16094-95, para. 12.

[34] As with primary streams (*see* 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1)), "substantially similar" multicast streams must have the same programming, except for programming features that are based on the enhanced capabilities of ATSC 3.0, including targeted advertisements and promotions for upcoming programs. Such enhanced content or features that cannot reasonably be provided in ATSC 1.0 format include: "hyper-localized" content (*e.g.*, geo-targeted weather, targeted emergency alerts, and hyper-local news), programming features or improvements created for the 3.0 service (*e.g.*, emergency alert "wake up" ability and interactive programming features), enhanced formats made possible by 3.0 technology (e.g., 4K or HDR), and any personalization of programming performed by the viewer and at the viewer's discretion. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9942-43, para. 22.

[35] That is, we mean either (1) a 1.0 multicast guest stream aired on a host that is a simulcast of a 3.0 multicast stream aired by the Next Gen TV station, or (2) a 3.0 multicast guest stream aired on a host that is a simulcast of a 1.0 multicast stream aired by the Next Gen TV station. For example, in this situation, Station A converts to 3.0 and arranges for Station B (remaining in 1.0) to host Station A's primary stream and one multicast stream in 1.0; Petitioner wants the multicast stream, like the primary stream, to be licensed to Station A, the originator of the streams. In addition, if Station A arranges for Station C (not the primary host) to host a second multicast stream in 1.0, that multicast stream would also be licensed to Station A. In these examples, Station A would itself be broadcasting both multicast streams in 3.0. Likewise, if a station remained in 1.0, it would be allowed to license its 3.0 multicast streams aired either by the primary host or a secondary host. In these situations, the multicast channels are being simulcast.

[36] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16096, para. 14.

[37] For example, using Stations A, B, and C from the prior example, Station A (the 3.0 host) only has enough capacity to air its primary channel, Station B's primary channel, and Station C's primary channel in 3.0, but wants to continue to provide its multicast channels in 1.0 during the transition. In this situation, Stations B and C would each be hosting a multicast stream licensed to Station A, but neither multicast stream would be simulcast. Thus, by "non-simulcast 1.0 multicast stream," we refer to a multicast stream that was originated by a Next Gen TV station and

(continued….)

- Declined to consider NAB's proposal to license a Next Gen TV broadcaster's "non-simulcast" 3.0 multicast stream(s) either together with its primary stream on its primary 3.0 host or on different 3.0 host(s).[38] A "non-simulcast 3.0 multicast stream" in the context of this proceeding is a multicast stream that is aired only in 3.0 format and not in 1.0 format.
- Proposed to allow, under certain circumstances, a Next Gen TV station to simulcast its primary stream programming both on its primary stream host and on a multicast stream carried by a different partner station in order to minimize the impact of service loss that would result if it were only able to air its primary stream on a single host.[39]

The *Next Gen TV Multicast Licensing FNPRM* also considered whether to limit the amount of host capacity that may be used by a given Next Gen TV station, and, in particular, sought comment on NAB's proposal that: "In arranging for the hosting of its programming, no individual broadcaster shall partner with other stations to host, in the aggregate, more programming than such station could broadcast on its own facilities based on the then-current state of the art for television broadcasting as evidenced by other television stations then operating with the same standard."[40] In response to the *Next Gen TV Multicast Licensing FNPRM*, we received comments, reply comments, and ex parte communications from 15 different parties, including 10 broadcast station groups and associations (including NAB) and two multichannel video programming distributor (MVPD) associations.[41]

B. Sunsets

10. *"Substantially Similar" Rule*. In the 2017 *First Next Gen TV Report and Order*, the Commission adopted a requirement that the programming aired on a Next Gen TV station's ATSC 1.0 simulcast channel be "substantially similar" to that of the primary video programming stream on the ATSC 3.0 channel.[42] This means that the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0 and promotions for upcoming programs.[43] In adopting this approach, the Commission found it "will help ensure that viewers do not lose access to the broadcast programming they receive today, while still providing flexibility for broadcasters to innovate and experiment with new, innovative programming features using Next Gen TV technology."[44] The Commission decided, however, that the substantially similar requirement would expire on July 17, 2023, unless the Commission takes action to extend it.[45] In this regard, the

(Continued from previous page)
aired in 1.0 format either on its own channel or a 1.0 host's channel, but that has no "substantially similar" stream being aired in 3.0 format by the originating station, whether on its own channel or on a 3.0 host's channel.

[38] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16097, para. 18.

[39] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16098, para. 19.

[40] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16094-95, 16099-16103, paras. 21-29.

[41] *See* Appendix A – List of Commenters and Reply Commenters.

[42] 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1); *First Next Gen TV Report and Order*, 32 FCC Rcd at 9942-43, para. 22. We refer to this as the substantially similar rule. The substantially similar rule is independent of the requirement for Next Gen TV broadcasters to simulcast in 1.0 format, a requirement that does not have a sunset date. *See* 47 CFR §§ 73.3801(b), 73.6029(b), 74.782(b).

[43] *See supra* note 34 (describing enhanced content or features that cannot reasonably be provided in ATSC 1.0 format).

[44] *First Next Gen TV Report and Order*, 32 FCC Rcd at 9942-43, para. 22.

[45] *Id*. We emphasize that the underlying requirement that a Next Gen TV station must simulcast in 1.0 format does not have a sunset date. *See* 47 CFR §§ 73.3801(b), 73.6029(b), 74.782(b) ("A full power television station that chooses to air an ATSC 3.0 signal must simulcast the primary video programming stream of that signal in an ATSC 1.0 format."). In addition, none of the other aspects of the local simulcasting rules are set to expire, including those
(continued….)

Commission concluded that, while "this [substantially similar] requirement is necessary in the early stages of ATSC 3.0 deployment, it could unnecessarily impede Next Gen TV programming innovations as the deployment of ATSC 3.0 progresses."[46] The Commission further stated that it "intend[ed] to monitor the ATSC 3.0 marketplace," and would "extend the substantially similar requirement if necessary."[47] The substantially similar rule took effect on July 17, 2018, and is set to expire on July 17, 2023, unless extended by the Commission.[48] The Commission affirmed this decision in 2020, but stated that, approximately one year before the requirement is set to expire, it would seek comment on whether the rule should be extended based on marketplace conditions at that time.[49]

11. *Requirement to comply with the ATSC A/322 standard*. In authorizing use of the Next Gen TV broadcast transmission standard, the Commission in the *First Next Gen TV Report and Order* required compliance with only two parts of the ATSC 3.0 suite of standards: (1) ATSC A/321:2016 "System Discovery & Signaling" (A/321),[50] which is the standard used to communicate the RF signal type that the ATSC 3.0 signal will use; and (2) A/322:2016 "Physical Layer Protocol" (A/322),[51] which is the standard that defines the waveforms that ATSC 3.0 signals may take.[52] In requiring compliance with A/322, the Commission observed that "device manufacturers and MVPDs may not be able to reliably predict what signal modulation a broadcaster is using unless broadcasters are required to follow A/322," at least with respect to their required primary programming stream.[53] The Commission explained that "[t]his uncertainty could cause manufacturers to inadvertently build equipment that cannot receive Next Gen TV broadcasts or could render MVPDs unable to receive and retransmit the signals of Next Gen TV stations. These outcomes would harm consumers."[54] The Commission, however, decided that it was not appropriate at the time "to require broadcasters to adhere to A/322 indefinitely," explaining that "the ATSC 3.0 standard could evolve, and stagnant Commission rules could prevent broadcasters from taking advantage of that evolution."[55] The Commission thus determined that the requirement to comply with the A/322 standard would expire on March 6, 2023, absent Commission action to extend it. In establishing a sunset for A/322 compliance, the Commission sought to "balance [its] goals of protecting consumers while promoting innovation."[56] The Commission affirmed this decision in 2020, but stated that,

(Continued from previous page)
governing simulcast arrangements and agreements; DMA and community of license coverage; and MVPD notices and consumer education. *See id*. §§ 73.3801, 73.6029, 74.782.

[46] *First Next Gen TV Report and Order*, 32 FCC Rcd at 9942-43, para. 22.

[47] *Id*.

[48] The local simulcasting rules, sections 73.3801, 73.6029, and 74.782, took effect on July 17, 2018. *Next Gen TV Rules Receive OMB Approval*, GN Docket No. 16-142, Public Notice, 33 FCC Rcd 6747 (MB 2018).

[49] *See Second Next Gen Report and Order*, 35 FCC Rcd at 6812-13, para 39.

[50] *See* ATSC A/321:2016 "System Discovery & Signaling" (2016), https://www.atsc.org/wp-content/uploads/2016/03/A321-2016-System-Discovery-and-Signaling.pdf.

[51] *See* ATSC A/322:2016 "Physical Layer Protocol" (2016), https://atsc.org/wp-content/uploads/2016/10/A322-2016-Physical-Layer-Protocol.pdf.

[52] These two standards were incorporated by reference into the Commission's rules. *See* 47 CFR § 73.682(f). The Commission applied the A/322 standard only to a Next Gen TV station's primary, free, OTA video programming stream.

[53] *First Next Gen TV Report and Order*, 32 FCC Rcd at 9980, para. 99.

[54] *Id*.

[55] *Id*. at 9980, para. 100.

[56] *Id*. at 9979-80, para. 98. On March 6, 2023, the Commission temporarily extended this requirement pending further Commission action on the sunset. *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Order, FCC 23-11 (Mar. 6, 2023).

approximately one year before the requirement is set to expire, it would seek comment on whether the rule should be extended based on marketplace conditions at that time.[57]

12. In June 2022, we adopted a Third Further Notice of Proposed Rulemaking (*Sunsets FNPRM*) in the Next Gen TV docket considering and seeking comment on the state of the Next Gen TV transition and on the scheduled sunsets of the substantially similar rule and the requirement to comply with the ATSC A/322 standard.[58] In response to the *Sunsets FNPRM*, the Commission received comments and reply comments from 32 different parties.[59]

III. DISCUSSION

13. In this Order, we largely adopt the rules proposed in the *Next Gen TV Multicast Licensing FNPRM*, establishing a licensing regime for Next Gen TV stations' multicast streams that are aired on host stations during the transition period. The rules we adopt facilitate and encourage Next Gen TV stations to preserve consumer access to multicast programming in 1.0 format during the voluntary ATSC 3.0 transition. They will provide the industry with regulatory certainty about the legal treatment of licensed multicast streams; clarify that the originating station (and not the host station) is responsible for regulatory compliance regarding a multicast stream being aired on a host station; give the Commission clear enforcement authority over the originating station in the event of a rule violation on the hosted multicast programming stream; and facilitate NCE stations' 3.0 deployment by allowing them to serve as hosts to commercial stations' multicast streams. We recognize that allowing Next Gen TV stations to seek modification of their licenses to include capacity on multiple host stations represents a notable departure from our present licensing regime. We also recognize that every such departure in aid of the voluntary NextGen TV transition, however minor it may appear, results in potential consumer harm and expense. For example, each time a stream is hosted on a different facility with a different noise-limited service contour (NLSC), some current viewers may lose a signal on which they may have come to rely, for the entire uncertain duration of the transition. By the same token, some viewers who were not previously in the coverage area may receive the signal for the first time. These viewers may come to rely on a signal that may be permanently lost at the end of the transition. Even in the case where a hosted stream covers the entire NLSC of the originating station, each time a change is made every single viewer must rescan each of their televisions and other receive devices to continue to receive that signal. In considering proposals like those in this proceeding, we therefore must weigh these inescapable harms, along with others unique to specific proposals, against the benefits that permitting additional flexibility in our licensing procedures may provide. In the case of the rules and flexibility adopted in this Order, we find that departing from our licensing regime is appropriate because it is limited to the temporary broadcast transition to 3.0 and to specific situations for which there is a clear need. Where we have declined to adopt the flexibility sought by broadcasters, it is because the record does not demonstrate that the needs and benefits outweigh the harms.

14. First, we conclude that Next Gen TV stations may seek modification of their licenses to include one or more simulcast multicast streams on a host station or stations, whether that guest stream is a 1.0 or 3.0 simulcast ("simulcast" multicast streams).[60] Second, we conclude that Next Gen TV stations that are broadcasting in 3.0 on their own channels may seek modification of their licenses to include one or more multicast streams aired only in 1.0 format on a host station or stations even if they are not simulcasting that stream in 3.0 ("non-simulcast" 1.0 multicast streams).[61] To permit the licensing of multicast streams on a host, each of the originating station's guest multicast streams will be licensed as a

[57] *Second Next Gen TV Report and Order*, 35 FCC Rcd at 6815, para. 44.

[58] *Sunsets FNPRM*, 2022 WL 2290237 at *1, para. 1.

[59] *See* Appendix A – List of Commenters and Reply Commenters.

[60] *See infra* Section III.A.

[61] *See infra* Section III.B.

temporary channel in the same manner as its primary stream is licensed on the primary host. That is, each of the originating station's guest multicast streams aired on a host will be considered to be an additional, separately authorized channel under the originating station's single, unified license. Third, we decline to address comments asking us to allow the licensing of 3.0 non-simulcast multicast streams (aired as guest streams on a 3.0 host station, as opposed to aired on a 3.0 station's own facility) because we specifically did not seek comment on this issue.[62] Fourth, we limit the number of 1.0 guest streams that may be included in the license of a single Next Gen TV station to those which it would have the capacity to transmit over its own facility in 1.0.[63] Fifth we allow, in certain circumstances, a Next Gen TV station to simulcast its primary stream programming both on its primary stream host and on a multicast stream carried by a different partner station in order to minimize the impact of 1.0 primary service loss that would result if originating station were only able to air its primary stream on a single host.[64] Sixth, we extend the "ownership waiver" that applies in the primary stream context to ensure that hosted multicast streams do not implicate our broadcaster attribution rules, while reiterating that any changes in our rules governing multicast streams, including any changes adopted in the ongoing ownership proceeding, will apply equally to hosted multicast streams.[65] Seventh, we decline to license same service (or "lateral") hosting arrangements.[66] Eighth, we conclude that we will generally apply the same ATSC 3.0 transition rules to licensed multicast streams as we do to primary simulcast streams.[67] Ninth, we conclude that our multicast licensing rules will apply until the Commission eliminates the mandatory local simulcasting requirement.[68] Finally, we extend the sunset dates for the substantially similar rule for simulcast streams and the requirement to comply with the ATSC A/322 standard on primary 3.0 streams.[69]

A. Simulcast Multicast Streams

15. We adopt our unopposed tentative conclusion to allow a Next Gen TV broadcaster to seek modification of its license to include its simulcast multicast stream(s), whether they are hosted together with its primary stream on the primary simulcast host or on different simulcast host(s).[70] That is, a Next Gen TV station may seek modification of its license to include one or more of its multicast streams, hosted by one or more partner stations, whenever the Next Gen TV station is airing that multicast stream in "substantially similar" fashion in both 1.0 and 3.0 formats and otherwise complying with the capacity, coverage, and other requirements discussed below. Broadcasters support this proposal,[71] and no

[62] *See infra* Section III.C.

[63] *See infra* Section III.D.

[64] *See infra* Section III.E.

[65] *See infra* Section III.F (hosting multicast streams on a temporary host station's facility will not result in attribution under our broadcast ownership rules or for any other requirements related to television stations attribution).

[66] *See infra* Section III.G.

[67] *See infra* Section III.H.

[68] *See infra* Section III.H. ("Timing").

[69] *See infra* Sections III.I (Substantially Similar Rule) and III.J (Requirement to Comply with the ATSC A/322 Standard).

[70] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16094-95, para. 12.

[71] *See, e.g.*, CMG Multicast Licensing Comments at 1-3; Gray Multicast Licensing Comments at 3; NAB Multicast Licensing Comments at 4; Pearl Multicast Licensing Comments at 4-5; PTV Multicast Licensing Comments at 3; Broadcasting Alliance Multicast Licensing Reply at 3; Scripps Multicast Licensing Reply at 3; TEGNA Multicast Licensing Reply at 1-2. As explained in the *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16095, n.47, the Commission did not address the issue of multicast licensing when adopting its initial rules. Instead, by default, multicast arrangements were left to private contractual arrangements and more recently to the STA process. We thus reject ONE Media's characterization of our existing rules. ONE Media Multicast Licensing Comments at 4 (arguing that guest multicast streams on a guest's primary host are "already covered under the guest's Next Gen TV (continued….)

commenter raised any concerns about permitting the licensing of simulcast multicast streams.[72] We adopt our tentative conclusion that any "simulcast" multicast streams must be "substantially similar" as that term is defined in our rules and will apply this requirement for as long as it applies to primary simulcasts.[73] In order to be considered a "simulcast," a 1.0 multicast stream must be paired, one to one, with an identified 3.0 multicast stream.[74] We find that permitting the licensing of simulcast multicast streams best meets our dual goals of facilitating the transition to 3.0 and protecting current 1.0 viewers for the reasons discussed above,[75] including by allowing NCE stations to host commercial multicast streams without violating section 399B.[76] We again emphasize, however, that like local simulcasting arrangements for primary streams, hosting arrangements for multicast streams are temporary ones made to facilitate the station's transition to 3.0 service. Any service temporarily provided by such a multicast

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license"). We clarify that the existing rules (relating to a Next Gen TV station's primary stream aired on a host) authorize only the use of the amount of capacity on a host's channel that is necessary for airing the guest's primary stream. *See* 47 CFR § 73.3801(a) (providing that "a full power television station may partner with one or more other full power stations or with one or more Class A, LPTV, or TV translator stations in a simulcasting arrangement *for purposes of airing either an ATSC 1.0 or ATSC 3.0 signal* on a host station's (*i.e.*, a station whose facilities are being used to transmit programming originated by another station) facilities.") (emphasis added)). The Commission did not previously authorize a guest station's use of host capacity for airing anything other than the guest's primary stream. We further clarify that we are authorizing a guest station to use host capacity only for the specific purpose of airing specific programming streams, each of which must be identified in the license application. We also thus reject ONE Media's position that "a guest station can use its capacity on the licensed host channel(s) for whatever programming or data services it wants." ONE Media Multicast Licensing Comments at 5. To be clear, guest stations (1.0 or 3.0) may never *license* host capacity for ancillary or supplemental services (also called Broadcast Internet services), although we note they may *lease* excess capacity from a host for such purposes through a private contractual arrangement. *Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916, 5924, para. 15 (2020) (*Broadcast Internet Declaratory Ruling and NPRM*) ("[W]e clarify that the lease of excess broadcast television spectrum to a third party, including another broadcaster, for the provision of ancillary and supplementary services does not result in attribution under our broadcast television station ownership rules . . . ."). Moreover, guest stations on a 3.0 host, of course, may air 3.0 features even if separately provided from the programming stream (e.g., advanced emergency alerts), as such features are not ancillary or supplemental services but rather enhanced programming features. *See supra* note 34.

[72] *See* ATVA Multicast Licensing Comments at 3 (stating that "[n]o commenter objected to this proposal when NAB made it, and ATVA does not object here"); NCTA Multicast Licensing Comments at 2 ("We generally do not oppose the Commission's proposal to … permit stations to license simulcast multicast streams on a host station(s), whether that guest stream is the 3.0 broadcast or the 1.0 simulcast."). *See also generally* GN Docket 16-142.

[73] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16094-95, para. 12. *See, e.g.*, 47 CFR § 73.3801(b)(1) and (2). *See also* NAB Multicast Licensing Comments at 4; *infra* Section III.H ("Timing").

[74] Multicast streams serving to deliver a primary stream's signal in order to minimize 1.0 primary stream service loss are the sole exception to this requirement. *Infra* Section III.E.

[75] *See supra* para. 13. *See also, e.g.*, NAB Multicast Licensing Comments at 4 (stating the proposal will "help facilitate ATSC 3.0 deployments while giving stations the flexibility to preserve multicast programming where possible"); Scripps Multicast Licensing Reply at 2, 8. *See also* PTV Multicast Licensing Comments at 3; TEGNA Multicast Licensing Reply at 1.

[76] 47 U.S.C. § 399B(a), (b)(2) ("No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement," which is defined as "any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration."). *See also Next Gen TV First Report and Order*, 32 FCC Rcd at 9954-55, para. 50 (concluding that a licensed simulcast approach will allow NCE stations to serve as hosts to commercial stations' simulcast programming); Petition at 3.

stream beyond the station's NLSC is incidental and may not be considered for securing any rights or benefits, now or in the future.[77]

B. Non-Simulcast 1.0 Multicast Streams

16. We also adopt our tentative conclusion and will allow a Next Gen TV broadcaster to seek modification of its license to include its 1.0 non-simulcast multicast streams, whether they are hosted together with its primary stream on the primary simulcast host or on different simulcast host(s).[78] That is, a Next Gen TV station broadcasting in 3.0 on its own channel may seek modification of its license to include one or more 1.0 multicast streams aired on a 1.0 host or hosts, even when it is *not* simulcasting that multicast stream on a paired stream in a 3.0 format, so long as it is otherwise complying with the capacity, coverage, and other requirements discussed below.[79] Broadcaster commenters support allowing the licensing of 1.0 non-simulcast multicast streams,[80] while MVPD commenters do not oppose such licensing, provided it is subject to reasonable limitations.[81] Like the licensing of 1.0 simulcast multicast streams, we find that permitting the licensing of 1.0 non-simulcast multicast streams will help preserve existing service and will achieve the goals discussed above, including by allowing NCE stations to host commercial multicast streams without violating section 399B.[82] We agree with broadcasters that allowing

[77] *Infra* Section III.H ("Timing"). At the conclusion of the transition, each Next Gen TV station will resume service exclusively from its own facility, serving its existing NLSC. Because any service beyond this area will be temporary, such service will not be considered by the Commission in other contexts (*e.g.*, must carry demands, market modifications, petitions for rulemaking to change a community of license, etc.).

[78] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16096, para. 14. BitPath asked that we permit the licensing of multicast streams on different hosts with identical programming when necessary in order to preserve service. BitPath Multicast Licensing Comments at 21. We do not adopt a specific rule addressing such streams, but we note that all guest multicast streams must serve the originating station's community of license (*infra* Section III.H, "Coverage"), and each of a station's hosted streams will be considered when determining its compliance with the limitations on host capacity (*infra* section III.D). In order to provide flexibility to preserve existing multicast streams, we also decline to restrict the number of 1.0 hosts with which a station may partner, so long as it does not exceed its licensed capacity and complies with the coverage requirements discussed below for each of its streams. *Infra* Sections III.D and III.H.

[79] Non-simulcast 1.0 multicast streams licensed pursuant to our rules are not required to comply with 47 CFR §§ 73.3801(b), 73.6029(b), and 74.782(b) (the "Simulcasting Requirement").

[80] Broadcaster commenters uniformly and enthusiastically support the licensing of non-simulcast streams and, to the extent the Commission adopts any limits, they support NAB's proposed host capacity limit. *See, e.g.*, CMG Multicast Licensing Comments at 1-3; Gray Multicast Licensing Comments at 3; NAB Multicast Licensing Comments at 4-5; Pearl Multicast Licensing Comments at 4-5; PTV Multicast Licensing Comments at 3; Broadcasting Alliance Multicast Licensing Reply at 3; Scripps Multicast Licensing Reply at 3; TEGNA Multicast Licensing Reply at 1-2. See also Evoca Multicast Licensing Reply at 4.

[81] MVPDs do not oppose the licensing of non-simulcast streams, provided there are reasonable limits on the number and types of multicast streams a Next Gen TV station may license on a host station. *See* NCTA Multicast Licensing Comments at 2-3 (stating that "[w]e generally do not oppose the Commission's proposal to … permit a 3.0 station to license non-simulcast 1.0 multicast streams on a host station(s)," but adding that "the Commission should adopt reasonable limits on the number and types of multicast streams a station may broadcast through a host station"); ATVA Multicast Licensing Comments at 8.

[82] *Supra* note 76 and accompanying text. Section 399B of the Communications Act provides that "[n]o public broadcast station may make its facilities available to any person for the broadcasting of any advertisement." 47 U.S.C. § 399B(b)(2). Under a private arrangement, an NCE station would be prohibited from hosting the simulcast programming of a commercial station because the stream would be aired on the "facilities" of the NCE licensee. However, under a licensed approach, the "facilities" are no longer exclusively the facilities of the NCE station, as each station has a right to use the facilities pursuant to its separate license and contractual rights. A commercial stream aired on a partner NCE station will be separately licensed and authorized to use the host's channel, therefore

(continued….)

multicast licensing for 1.0 non-simulcast multicast streams will benefit consumers by preserving viewer access to 1.0 multicast streams,[83] particularly in situations where broadcasters that have transitioned to 3.0 on their own channels lack capacity to air their multicast streams on their 3.0 facilities. As observed in the *Next Gen TV Multicast Licensing FNPRM*, at this early stage of the transition ATSC 3.0 capacity will be limited.[84] During the initial roll-out of 3.0 service, we expect markets will generally start with one or two ATSC 3.0 "lighthouse" stations, leaving capacity on 3.0 lighthouse stations mostly – if not entirely – for Next Gen TV stations' primary streams.[85] We agree with broadcasters that denying them this flexibility would likely lead them to stop broadcasting some 1.0 multicast streams altogether.[86] We therefore find that, by extending our multicast licensing approach to non-simulcast 1.0 multicast streams, we will not only encourage Next Gen TV broadcasters to preserve the multicast streams viewers watch today, but also facilitate their transition to 3.0 by making it easier for them to continue serving their existing viewers even while 3.0 spectrum is limited. While we expect that capacity constraints will be the primary reason for this relief, given the strong public interest in facilitating broadcasters' preservation of the best possible 1.0 service during the transition period, and our limit on the amount of host capacity that may be licensed, we see no reason to require broadcasters to demonstrate 3.0 capacity constraints in order to license 1.0 non-simulcast multicast streams.[87] Finally, we again emphasize that hosting arrangements for multicast streams are temporary ones made to facilitate the transition to 3.0 service.[88]

C. Non-Simulcast 3.0 Multicast Streams

17. Our current rules do not provide for the licensing of 3.0 non-simulcast multicast streams aired as guest streams on a 3.0 host station.[89] In the *Next Gen TV Multicast Licensing FNPRM*, we specifically declined to seek comment on NAB's proposal asking us to allow a Next Gen TV station (that continues to broadcast in 1.0 on its own channel) to seek modification of its license to include 3.0 multicast (guest) streams aired on a 3.0 host station, even if it is not simulcasting those multicast streams

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permitting an NCE station to serve as a host to a commercial stream. *See Next Gen TV First Report and Order*, 32 FCC Rcd at 9954-55, para. 50.

[83] *See, e.g.*, CMG Multicast Licensing Comments at 1-3; Gray Multicast Licensing Comments at 3; NAB Multicast Licensing Comments at 4-5; Pearl Multicast Licensing Comments at 4-5; PTV Multicast Licensing Comments at 3; Broadcasting Alliance Multicast Licensing Reply at 3; Scripps Multicast Licensing Reply at 3; TEGNA Multicast Licensing Reply at 1-2.

[84] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16096, para. 15.

[85] *Id*.

[86] *See, e.g.*, TEGNA Multicast Licensing Reply at 3 ("[W]ithout the flexibility to arrange for non-simulcast ATSC 1.0 hosting of their multicast streams, these lighthouse stations would have had to either forego their conversion to Next Gen TV service (thus impeding the launch of advanced services in the market entirely) or else eliminate their broadcast of some or all of their multicast streams altogether. Neither option would serve the public interest.").

[87] *See, e.g.*, Pearl Multicast Licensing Comments at 4 ("There are many reasons why a broadcaster may not be simulcasting a multicast stream in both ATSC 1.0 and ATSC 3.0. While broadcasters cannot at this time envision every circumstance, we note that capacity issues are a major factor and other concerns such as rights and licensing issues could be at play. Broadcasters need the flexibility that the proposal would provide without the limitation based on demonstrated capacity in order to manage the transition."). We thus reject NCTA's suggestion that we require a broadcaster to demonstrate 3.0 capacity constraints as a prerequisite to receiving authorization for non-simulcast 1.0 streams. We find that concerns regarding the need for limits on any one broadcaster's use of spectrum will be adequately addressed by the capacity constraints that we adopt below. *See* NCTA Comments at 2-3.

[88] *Infra* Section III.H ("Timing").

[89] Because at this time our rules do not allow Next Gen TV stations to license host capacity for 3.0 non-simulcast multicast streams, we do not address the issue of a 3.0 host capacity limit.

in a 1.0 format.[90] Thus, we do not address the comments we nevertheless received on this issue.[91] We note, however, that under our existing rules, a Next Gen TV station may air 3.0 non-simulcast multicast streams on its own 3.0 facility. This is because, under our existing rules, a Next Gen TV broadcaster does not have to simulcast its multicast streams in 1.0 and does not need separate license authorization to air its own multicast streams on its own 3.0 facility.[92]

D. Limits on Licensing of Host Capacity

18. In response to our request for comment on ensuring that a Next Gen TV broadcaster does not use the interim flexibility proposed in this FNPRM to aggregate capacity beyond that which is legally permissible today, we find that it is appropriate to limit a Next Gen TV station's 1.0 host capacity to that which it could deploy on its own 1.0 channel and adopt a modified version of NAB's proposal in order to effectuate this limit.[93] Specifically, a Next Gen TV station that has converted its own facility to 3.0 must not license more capacity on partner host stations, in the aggregate, than the station could use if it were still operating its own facility in 1.0. A Next Gen TV station must demonstrate compliance with this rule in its license application and may do so by either: (1) showing that it is seeking hosting only for streams it was broadcasting on its own 1.0 facility prior to its transition to 3.0; or (2) by providing an example of another 1.0 station that is carrying or has carried the same or a similar programming lineup to that which it seeks to provide on host stations and at the same resolutions. To enable the Commission and other interested parties to evaluate compliance with the host capacity limit, a Next Gen TV station applicant

[90] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16097, para. 18. *See* NAB Petition at 1-2.

[91] *See, e.g.*, BitPath Multicast Licensing Comments at 26-27; Gray Multicast Licensing Comments at 4; NAB Multicast Licensing Comments at 6; ONE Media Multicast Licensing Comments at 8-9; Pearl Multicast Licensing Comments at 10-11; PTV Multicast Licensing Comments at 4-5; Broadcasting Alliance Multicast Licensing Reply at 3; NAB Multicast Licensing Reply at 11; Scripps Multicast Licensing Reply at 3; TEGNA Multicast Licensing Reply at 5.

[92] *See* 47 CFR §§ 73.3801(b), 73.6029(b), 74.782(b). Consequently, a Next Gen TV station that converts its own facility to 3.0 could air a "demo" multicast stream without simulcasting such stream in 1.0. Pearl Multicast Licensing Comments at 11 (stating that allowing licensing of a 3.0 non-simulcast multicast stream is needed to provide a "'barker channel' or 'demo channel' that would contain highlights or a 'sizzle reel' of ATSC 3.0 programming showcasing the new technology and how viewers can unlock the many advanced features ATSC 3.0 makes possible"). *See also, e.g.*, Gray Multicast Licensing Comments at 6.

[93] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16101, para. 26 (seeking comment "on how to ensure that a Next Gen TV broadcaster does not use the interim flexibility proposed in this FNPRM to aggregate spectrum beyond that which is legally permissible today" and stating that "[a] single station may generally use no more than 6 MHz under its license"). We also sought comment on a specific NAB proposal to address this concern, limiting the scope of hosting arrangements by requiring that "[i]n arranging for the hosting of its programming, no individual broadcaster shall partner with other stations to host, in the aggregate, more programming than such station could broadcast on its own facilities based on the then-current state of the art for television broadcasting as evidenced by other television stations then operating with the same standard." *Id*. at para. 24. Even at the time, of proposing this language, however, NAB noted that it did not consider such a limitation necessary. Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed Apr. 9, 2021). We note that one 6 MHz channel provides a station with approximately 19.4 Mbps of capacity. Although the *FNPRM* referred to "spectrum aggregation," we agree with NAB (NAB Multicast Licensing Comments at 9-10) that this concern is more accurately described as *capacity* aggregation and that this concept, and our implementation of NAB's proposal, also encompasses many of the concerns discussed in the *FNPRM* about "programming aggregation." *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16099-100, para. 22. As noted in the Ownership Issues section, *infra* Section III.F, some concerns about "programming aggregation" are better addressed in the quadrennial proceeding.

will be required to provide information regarding each of its licensed streams.[94] Stations may also be asked to submit additional information to the Commission upon request.

19. We agree with commenters asserting that a reasonable limit on the amount of host capacity that may be licensed by an individual Next Gen TV (guest) station is appropriate. As these commenters suggest, this is needed in order to ensure that no station abuses the flexibility permitted by 1.0 non-simulcast multicasting to aggregate capacity beyond that which is physically possible or legally permissible when broadcasting from a single facility.[95] We believe this is necessary because it is not our intention to upend the entire structure of broadcast television licenses for this transition period, and we are conscious of the consumer confusion that may be inadvertently caused by the coverage changes inherent in a multiple-host approach. We see no reason, as a matter of spectrum policy, to permit stations to use more capacity on hosts than they could on their own stations. Indeed, no commenter argues that a single station *should* have the ability to aggregate host capacity beyond that which it could use if it were still operating on its own facility in 1.0.[96] Broadcaster commenters merely argue that the likelihood of such aggregation is small, asserting that there will be less total 1.0 capacity in a given market when a station transitions and such capacity will only further diminish as more stations in the market transition.[97] We believe it is appropriate for our rules to ensure this eventuality does not occur even if the likelihood is low, especially in light of the fact that reduced available capacity would only amplify any concerns about harms to competition and diversity of viewpoints if one station were to occupy more capacity through hosts than its license would otherwise permit. Accordingly, it is our intention that the capacity limitation operate hand in hand with our rule permitting licensing of 1.0 non-simulcast multicast streams.

20. We agree with NAB that any capacity restriction we adopt should limit stations to the capacity they could have used if they were still broadcasting in 1.0 on their own facilities, without restricting their ability to add or change programming streams during the transition. Accordingly, we decline to adopt alternative proposals to the extent they seek to address issues beyond that scope.[98] To

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[94] *Infra* Section III.H ("*Form 2100"*); *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16106, para. 36. *See also* Letter from Michael Nilsson, Counsel to the American Television Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 6 (filed Sept. 21, 2017) (ATVA Sept. 21, 2017 *Ex Parte* Letter).

[95] *See*, *e.g.*, ATVA Multicast Licensing Comments at 2 (stating that "the Commission should place reasonable limits on non-simulcast multicasting"); NCTA Multicast Licensing Comments at 2-3 (urging the Commission to "adopt reasonable limits on the number and types of multicast streams a station may broadcast through a host station"); NAB Multicast Licensing Comments at 10-12 (proposing a limit on the use of host capacity).

[96] *See*, *e.g.*, BitPath Multicast Licensing Reply at 10 (stating that "nobody has proposed to allow any station to use the hosting rules to transmit more streams than it could otherwise transmit on a single ATSC 1.0 station"). We also reject APTS' proposal to exempt NCE stations from the host capacity limit. APTS Multicast Licensing Comments at 5. We find our rationale for establishing the host capacity limit applies to both commercial and NCE stations.

[97] *See* Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1-2 (filed May 12, 2022) (NAB May 12 *Ex Parte* Letter) (stating that "because there will be less aggregate ATSC 1.0 capacity in any market deploying ATSC 3.0 service, and because no station has the ability to exert intra-market leverage over any other during the transition, concerns that broadcasters would abuse this rule are unfounded and unrealistic"). *See also* BitPath Multicast Licensing Comments at 22 ("The most basic reason not to fear spectrum aggregation is that the unfortunate result of transition hosting is less spectrum to go around as some stations are taken offline for ATSC 1.0 purposes.").

[98] For example, while our rule addresses NCTA's call for "meaningful and enforceable limits on the hosting of multicast streams," we believe the group's concerns about the impact on multicast signal carriage are better resolved in the context of private retransmission consent negotiations or, if appropriate, the carriage complaint process. NCTA Multicast Licensing Comments at 3. Also, Edge Networks (Evoca) commented "[t]he Commission should address anticompetitive practices of broadcasters who use their control of content to restrict new market entry and video competition." *See* Edge Networks (Evoca) Multicast Licensing Comments at 14. Evoca has clarified, however, that its recommendations regarding retransmission consent in its initial comments were not intended to be proposals for rulemaking. Edge Networks (Evoca) Multicast Licensing Reply at 4.

this end, we adopt the substance of NAB's proposal, modifying it only to require that stations demonstrate compliance by submitting a limited amount of specific information at the time of application, rather than in response to complaints. In the *Next Gen TV Multicast Licensing FNPRM*, the Commission expressed concern about the specific language of NAB's proposal, stating that "an effective rule … would need to be objective, simple for stakeholders to understand and apply, and amenable to enforcement."[99] MVPD commenters agree with this concern and suggest an objective capacity limit based on a set number of streams, whether a generally applicable limit or one based on the number of streams the station provided prior to its transition to 3.0.[100] Upon review of the record, we are persuaded that such alternatives would be overly restrictive[101] and that the best metric will be the number and resolution of streams actually airing (or that previously actually aired) on specific 1.0 facilities.[102]

21. We agree with ATVA that ensuring compliance with capacity limits associated with a single 1.0 station does not require the Commission to engage in a technical bit-by-bit analysis of a broadcaster's service. Rather, we conclude that reviewing basic information about each proposed stream (particularly its network affiliation and resolution) and considering an appropriate capacity comparison (either the prior capacity of the station itself or the reference point of another 1.0 station with a similar lineup at the same resolutions and on the same type of facility (individual or shared)) will suffice to enable the Commission to ensure a particular broadcaster is not expanding its capacity beyond that which it could use pursuant to the Commission's traditional 1.0 licensing regime.[103] We find that it is reasonable

[99] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16100-01, para. 24.

[100] *See* ATVA Multicast Licensing Comments at ii (seeking "[a] limitation on programming streams—either reflecting what the station had done before or some generally applicable limit—with a rule of thumb to compare bandwidth consumed by various types of feeds"); NCTA Multicast Licensing Comments at 3 (seeking "a limit on the total number of multicast streams an originating station is permitted to license on host stations"); NCTA Multicast Licensing Reply at 2 (proposing that "the Commission adopt a rule providing that no individual broadcaster should be permitted to partner with other stations to host, in the aggregate, more multicast programming than such station was broadcasting on its own facilities at the time the Second Further Notice was adopted"); Letter from Michael Nilsson, Counsel to the American Television Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 2 (filed May 31, 2022) (ATVA May 31 *Ex Parte* Letter) (stating that NAB's proposed rule "needs to explicitly reference picture quality or some other measure of 'capacity' in order to work" and suggesting a station's demonstration of compliance with the rule must "tak[e] into account reasonable comparisons of bitrate and picture quality").

[101] *See*, *e.g.*, BitPath Multicast Licensing Reply at i, 2 ("Limiting hosting to the streams a station was broadcasting at the time of the ATSC 3.0 conversion would create a significant disincentive for stations to convert. Stations converting to ATSC 3.0 often have ample capacity to launch new streams before they convert, and there is no policy reason to require them to forfeit that option and thereby limit competition in the local market simply because they made the investment to convert to ATSC 3.0."); NAB Multicast Licensing Comments at 11 (stating that "selecting an arbitrary cap on the number of streams a station can air on host stations … may serve to deprive the public of desired programming, and will not factually reflect broadcast technology because streams are not a remotely accurate proxy for capacity"); ONE Media Multicast Licensing Reply at 5-6 ("NAB's proposed limitation on hosting arrangements would wholly resolve [ATVA's and NCTA's ownership, spectrum aggregation, and program aggregation] concerns" … and "it would do so without imposing arbitrary caps on host stations or hosted streams or otherwise frustrating the Commission's goals and Next Gen broadcasters' efforts to minimize viewer disruption."); TEGNA Multicast Licensing Reply at 5 ("A station that does not participate in a Next Gen TV launch is free to broadcast as many program streams on its channel – in any format and regardless of content – as its encoders can accommodate. Indeed, ATSC 1.0 encoder technology continues to improve, which has allowed stations to expand their over-the-air offerings.").

[102] NAB May 12 *Ex Parte* Letter at 1-2 (clarifying that NAB's proposed limit was intended to cover essentially two situations: (1) when a station was going to provide the same programming lineup that it did prior to its transition; or (2) when a station was going to provide the same or a similar programming lineup as another 1.0 station).

[103] ATVA Sept. 21, 2017 *Ex Parte* Letter at 6. *See also Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16106, para. 36. This approach also captures the "state of the art," as contemplated by NAB's proposed rule

(continued….)

to require Next Gen TV station applicants to provide this information, which is largely consistent with the information currently required in the Legal STA process,[104] and therefore reject NAB's proposal that Next Gen TV station applicants provide only a certification without further information at the time of application.[105]

22. We reject NAB's contention that it would be more appropriate for the burden of discovering excessive use of capacity to be on MVPDs and that comparison information should be provided by stations only in response to complaints.[106] As justification for this approach, NAB asserts that providing the capacity information in the absence of a complaint would be a waste of both Commission and broadcaster resources. We disagree. This capacity information – asking whether the proposed lineup could fit within a 1.0 channel by comparing it to a similar one that has actually aired – is necessary to make an informed objection to a proposed use of host capacity. Further, we fail to see how providing this information requires materially more resources than NAB's certification proposal. Any *ex ante* certification of the type proposed by NAB would require the applicant to certify that it has a reasonable belief that all of the proposed streams could be simultaneously broadcast by the station on its own 1.0 facility if it had one. This reasonable belief presumably would need to be based upon the collection of the same information we are asking the broadcaster to provide. And we are persuaded by NAB that broadcasters will necessarily base such a belief on the actual experience of specific stations, rather than on any sort of detailed technical analysis. Therefore, requiring that stations preemptively share the same public information that would be the basis of their certification – that is, whether the same or a similar lineup has ever previously aired – is reasonable and would not "waste" broadcaster resources. Furthermore, we believe this requirement provides greater certainty to broadcasters than a complaint process, because the showing submitted will demonstrate compliance with the rule.[107] Moreover, as discussed below, providing the required information about a station's operations during the transition period will provide much needed transparency for the public and stakeholders.[108]

(Continued from previous page)
language, by allowing stations to compare themselves to the most advanced peer stations both at the outset of 3.0 service and whenever they make changes to their lineup. *See* BitPath Multicast Licensing Reply at 3 ("[I]t's easy to determine what the state of the art is at any time. One need only look at the various combinations of stacking then in operation.") (internal footnote excluded).

[104] *Infra* Section III.H ("*Form 2100*").

[105] NAB May 12 *Ex Parte* Letter at 1-2 ("NAB's proposal would require broadcasters to certify on their applications that they would not arrange for hosting of more content than they could host on their own facility."); Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (filed June 14, 2022) (NAB June 14 *Ex Parte* Letter) ("NAB has proposed that the Commission allow a station to demonstrate that it had not acquired access to more capacity than it would otherwise have by demonstrating that it could successfully transmit all hosted programming on a single ATSC 1.0 facility. To prevent the abuse of the Commission's processes and the waste of both Commission and broadcaster resources, NAB has proposed that a broadcaster should only be required to submit such a showing in response to a Commission inquiry or a complaint that made a prima facie case the Commission deems worth of a response.").

[106] NAB June 14 *Ex Parte* Letter at 2 ("Representatives of cable companies are the only parties to have objected to the substance of NAB's proposal because these companies assert they will be uniquely injured by broadcasters' entirely theoretical abuse of this rule because it will unduly burden cable companies' capacity constraints.… ATVA's members are also uniquely qualified to know whether broadcasters are indeed abusing it since, according to the cable lobby, the potential harm resulting from any violation would be a devastating burden on cable capacity."). Because we do not rely on claims of harm to cable companies in our decision, we do not address NAB's objections to those claims.

[107] We note that, while NAB identifies these as "examples" of ways to demonstrate compliance, neither they nor any other commenter have proposed any other way for a station to demonstrate "that it could successfully transmit all hosted programming on a single ATSC 1.0 facility." NAB May 12 *Ex Parte* Letter.

[108] *Infra* Section III.H ("*Form 2100*").

E. Use of Multicast Streams to Minimize 1.0 Primary Stream Service Loss

23. We adopt rules providing that, in certain circumstances, a Next Gen TV station may simulcast its primary stream programming both on its primary stream host and on a multicast stream carried by a different partner station in order to minimize the impact of 1.0 primary service loss that would result if an originating station were only able to air its primary stream on a single host.[109] We also adopt our tentative conclusion that such streams will be considered a "simulcast multicast stream" and count toward the host capacity limit established herein. Accordingly, we adopt our tentative conclusion that a multicast stream that is a second (or additional) simulcast of a primary stream must be "substantially similar" to the 3.0 primary stream.[110] Broadcasters largely support this proposal,[111] and no commenter objected to it.[112] We agree with broadcasters that preserving 1.0 primary service is critically important during the transition period and that this relief supports that goal.[113]

24. We therefore affirm the earlier Bureau decision approving this method of mitigating 1.0 service loss and bring such streams within the transition licensing regime discussed herein without the need for case-specific STAs.[114] We expect this situation will arise only when an applicant intends to

[109] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16098-99, para. 19. While the Bureau will consider proposals that would use more than one multicast stream (airing primary programming), such proposals will require the public interest showing under the non-expedited processing standard. We expect this situation will arise only when such streams are aired on low-power TV 1.0 hosts. *See* BitPath Multicast Licensing Comments at 21.

[110] *Next Gen TV Multicast Licensing FNPRM*, 2021 WL 518291436 FCC Rcd at 16098 at *7, para. 19. Indeed, by definition as a second (or additional) simulcast of a 3.0 primary stream, we expect this stream will be identical to the simulcast of the primary stream (which, by rule, must be substantially similar to the 3.0 primary stream). *See* 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1). In addition, we adopt our tentative conclusion that this multicast stream, like all hosted streams, will count toward the host capacity limit established in this Order. *Supra* Section III.D.

[111] *See*, *e.g.*, Pearl Multicast Licensing Comments at 4-6; NAB Multicast Licensing Comments at 6; BitPath Multicast Licensing Comments at 20-22; CMG Multicast Licensing Comments at 4; ONE Media Multicast Licensing Comments 11-14; PTV Multicast Licensing Comments at 4; ATBA Multicast Licensing Comments at 5-6. We note that ONE Media and ATBA contend that this proposal does not go far enough and that we should afford such an application expedited processing. *See* ONE Media Multicast Licensing Comments 11-14; ATBA Multicast Licensing Comments at 5-6. We reject this proposal. Considering whether the use of a multicast stream to supplement the primary stream is appropriate requires consideration on a case-by-case basis. The non-expedited process allows the Bureau to collect additional information that will be used to ensure the proposed use is in the public interest.

[112] Although the *WNUV STA* called this stream a "supplemental primary ATSC 1.0 simulcast stream," we decline to use this term and emphasize that, contrary to the argument advanced by ONE Media, such a stream is a *multicast* stream and *not* an additional *primary* stream. *See* ONE Media Multicast Licensing Comments at 12. As a multicast stream, this signal has no carriage rights. *See Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16098, para. 19, n.72; NCTA Multicast Licensing Comments at 5-6. Furthermore, as noted above, any service provided by such a multicast stream beyond the station's NLSC is incidental and may not be considered for securing any rights or benefits, now or in the future. For example, we will reject a request by a broadcaster to modify its market to add communities based on the service of this multicast stream. *See* NCTA Multicast Licensing Comments at 5-6.

[113] *See, e.g.*, Pearl Multicast Licensing Comments at 6 ("Allowing broadcasters to place their primary signal on two stations, as the Further Notice proposes to do, supports the goal of the Commission and broadcasters to maximize the ability of viewers to receive a signal.").

[114] *Authorization for Application of WNUV-TV for Modification of License as Amended and Application of WNUV-TV for Legal Special Temporary Authority as Amended*, Letter Order, LMS File Nos. 0000136472 and 0000136473, at 1, 6 (VD June 22, 2021) (*WNUV STA*). As noted in that decision, applicants whose applications are reviewed under the non-expedited processing standard are required to minimize the impact of the expected service loss, but the Commission did not require a specific method for doing so. *Next Gen TV Report and Order*, 32 FCC Rcd at 9947-48, para. 34.

broadcast in 3.0 on its own channel and is unable to find a partner 1.0 host that could, on its own, provide coverage of its primary stream to 95 percent of the applicant's 1.0 service area. Applications seeking to use a multicast stream to supplement the service provided by their primary stream will be considered by the Media Bureau under the process for non-expedited applications.[115]

25. Contrary to our tentative conclusion in the *Next Gen TV Multicast Licensing FNPRM*, we do not limit this relief only to NCE stations or commercial stations airing multicast streams on NCE partner hosts.[116] The *Next Gen TV Multicast Licensing FNPRM* asked whether this approach would be an acceptable method for mitigating ATSC 1.0 service loss for any other types or groups of applicants.[117] No commenter opposed extending this relief to other types or groups of applicants and we are persuaded by broadcasters' comments that other similarly situated stations may be able to show that their use of multicast streams to minimize service loss of the primary 1.0 stream is in the public interest.[118] We therefore allow any Next Gen TV station to apply for this relief under the non-expedited process, but emphasize that all applicants must demonstrate why this relief is in the public interest and outweighs any potential harms. As discussed in the *Next Gen TV Multicast Licensing FNPRM*, we recognize that each programming stream devoted to simulcasting a primary stream is one fewer that could be devoted to multicast programming, potentially reducing the diversity of programming available to viewers in order to ensure the widest availability of the most popular programming.[119] We also note that a station airing its primary stream programming on two hosts could be reaching many viewers previously outside its 1.0 footprint.[120] Thus, the Bureau must consider whether the benefits of a given proposal outweigh any harms, including any impacts on localism, diversity of programming offerings, and/or viewer confusion. Finally, we emphasize that service temporarily provided by a multicast stream that is used as a second

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[115] In the *Next Gen TV Report and Order*, the Commission established a presumption that it would favor grant of an application demonstrating that the station would provide ATSC 1.0 simulcast service to at least 95 percent of the predicted population within the station's original NLSC and afford "expedited processing" to such applications. *Next Gen TV Report and Order*, 32 FCC Rcd at 9946, para. 29. *See also* 47 CFR §§ 73.3801(f)(5)-(6), 73.6029(f)(5)-(6). A Next Gen TV applicant whose ATSC 1.0 simulcast signal will not satisfy this 95 percent threshold ("non-expedited applicant") will be considered on a case-by-case basis and must provide the following information: (1) whether there is another possible simulcast partner(s) in the market that would result in less 1.0 service loss to existing viewers and, if so, why the Next Gen TV broadcaster chose to partner with a station creating a larger service loss; (2) what steps, if any, the station plans to take to minimize the impact of the 1.0 service loss (e.g., providing ATSC 3.0 dongles, set-top boxes, or gateway devices to viewers in the loss area); and (3) the public interest benefits of the simulcast arrangement and a showing of why the station believes the benefit(s) of granting the application outweigh the harm(s). *See Next Gen TV Report and Order*, 32 FCC Rcd at 9947-48, para. 34; 47 CFR §§ 73.3801(f)(6)(iii), 73.6029(f)(6)(iii).

[116] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16098, para. 19, n.74 ("For the purposes of this tentative conclusion, we consider similarly situated originating stations to be NCEs, or commercial stations working with NCE partner hosts, transitioning their own channel to 3.0, who are unable to find a partner 1.0 host that could, on its own, provide coverage of its primary stream to 95 percent of the applicant's 1.0 service area."). In proposing this approach, we supported the Bureau's prior decision, which found that "permitting NCE stations to participate in the ATSC 3.0 rollout arrangements in this manner is critical to the success of the transition," in large part because NCE stations make up over 20% of all full power broadcasters. *WNUV STA*, at page 6.

[117] *Id*. at 20.

[118] *See, e.g.*, Pearl Multicast Licensing Comments at 4-6; BitPath Multicast Licensing Comments at 21. Pearl contends that "this [relief] is a particularly good solution for various scenarios, such as: small markets that are spectrum constrained; geographically large markets with a small population, like the Butte-Bozeman DMA in Montana; and markets where some broadcasters rely on a single full power station to serve the market and other broadcasters have multiple stations serving the same market, such as La Crosse-Eau Claire in Wisconsin or Birmingham, Alabama." *Id*.

[119] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16099, para. 20.

[120] *Id*.

simulcast of a primary stream will not give rise to any rights for the broadcaster or impose any obligations on MVPDs, and may not be considered for purposes of securing any rights or benefits, now or in the future.

F. Ownership Issues

26. Consistent with our decision with regard to hosted primary streams of NextGen TV stations, hosting multicast streams on a temporary host station's facility will not result in attribution under our broadcast ownership rules or for any other requirements related to television stations attribution (e.g., filing ownership reports).[121] In the *Next Gen TV Multicast Licensing FNPRM*, we asked whether the temporary nature of the exemption and our desire to minimize viewer disruption while facilitating the 3.0 transition made the hosting of multicast streams similar enough to the hosting of primary streams to warrant the same approach.[122] We are persuaded by the record that they do. Broadcaster commenters support this approach, maintaining that the hosting of multicast streams would further the same objectives as primary stream hosting.[123] Consistent with the need articulated by broadcasters, we emphasize that the new flexibility we grant herein is intended to serve the purpose of minimizing viewer disruption, and we find that the clear benefits of such an approach for viewers outweigh any potential for abuse under our ownership rules that some commenters have raised.[124] This decision does not change the Commission's broadcast ownership rules in any substantive way and certainly does not alter the number of stations a broadcaster can own in a particular market.[125] As discussed in the *Next Gen TV Multicast Licensing FNPRM*, ATVA and others have raised concerns in the 2018 Quadrennial Review proceeding about the practical impact of the ownership rules in light of the growing practice of placing Big-four network programming on multicast streams.[126] We find that those concerns are best addressed in the Quadrennial Review context,[127] not least because any decision made in that proceeding with respect to Big-four network affiliations will apply to all licensed multicast streams, hosted or otherwise.

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[121] *Next Gen TV First Report and Order*, 32 FCC Rcd at 9972, n.237. *See also Broadcast Internet Declaratory Ruling and NPRM*, 35 FCC Rcd at 5924, para. 15.

[122] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16102-03, paras 27-28.

[123] *See, e.g.*, Pearl TV Multicast Licensing Comments at 6 (contending that "[t]he Commission should extend the waiver of the local broadcast ownership rules that it adopted along with the ATSC 3.0 rules to apply to the multicast arrangements discussed herein") (internal footnotes omitted); Cox Multicast Licensing Comments at 4 (requesting that the Commission "extend the waiver of the local broadcast ownership rules to multicast stream hosting partnerships for the duration of the transition"); NAB Multicast Licensing Comments at 8 (arguing that "there is no reason to take a different approach with respect to multicast streams, whether simulcast or not, than the Commission has taken with respect to simulcast primary streams with respect to the Commission's ownership rules"). *See also* Scripps Multicast Licensing Reply at 7 (arguing that the Commission should instead describe temporary hosting arrangements as "not subject to" the broadcast ownership rules).

[124] ATVA Multicast Licensing Comments at 5, 8-9 ("Non-simulcast multicasting could also create a new loophole that could permit stations to evade the local ownership rules… broadcasters here seek to disturb the *status quo* by creating a *new* loophole.") (emphasis in original).

[125] *Supra* Section III.F. *See also* One Media Multicast Licensing Comments at 16 (contending that "the proposed administrative change of licensing the temporary hosting arrangements discussed above rather than continuing to approve them through STAs does not create any 'loopholes' to any Commission ownership rules").

[126] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16099-100, paras 22-23.

[127] *See, e.g.*, Pearl TV Multicast Licensing Comments at 12 ("[T]o the extent there are any concerns about programming aggregation as related to ownership issues, these concerns are more productively addressed in the Quadrennial Review."); BitPath Multicast Licensing Reply at 10-11.

G. Same-Service (or "Lateral") Hosting

27. We adopt our tentative conclusion declining at this time to license same service (or "lateral") hosting arrangements, though we are open to considering such arrangements in limited circumstances.[128] Same-service (or "lateral") 1.0 hosting refers to a situation in which a Next Gen TV station still operating its own facility in 1.0 and serving as a 1.0 host for another Next Gen TV station that converted its facility to 3.0 seeks to relocate one or more of its own multicast streams to another 1.0 host station.[129] We are not convinced that a general rule as proposed that would permit this practice is necessary to minimize viewer disruption during the transition. Even advocates for a rule concede that the hypothetical problems it could resolve would occur only rarely.[130] Given the lack of any demonstrated need to allow such arrangements in all markets, we refrain from adopting a general rule at this time. Nonetheless, as discussed below, we will entertain requests for special temporary authority to permit 1.0 same-service hosting and may revisit this decision once we have more experience with situations in which such flexibility may be necessary to enable a market to transition.[131]

28. BitPath and other commenters contemplate scenarios in which multiple Next Gen TV stations across a market would shift streams from station to station in order to facilitate their move toward 3.0.[132] For example, broadcasters in the New York DMA (the New York City market) have argued that multiple stations engaging in same-service hosting is a business necessity in order to maximize the number of stations willing to transition simultaneously.[133] On the current record, however, there is no evidence that same-service hosting is technically necessary to make any market's transition possible. Indeed, there has only been one instance in which a Next Gen TV broadcaster sought Commission approval to keep its facility in 1.0 while shifting some 1.0 programming to a host.[134] That station and that

[128] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16096, para 14.

[129] Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (filed Aug. 10, 2022) (NAB Aug. 10 *Ex Parte* Letter) (explaining that this refers to a situation in which "a station transmitting in ATSC 1.0 might arrange for the hosting of one or more of its multicasts on another 1.0 station in the market to ensure that the first station has sufficient capacity to host the programming of an ATSC 3.0 station in the market"). Such a scenario could theoretically also arise among 3.0 hosts.

[130] NAB Aug. 10 *Ex Parte* Letter (stating that "such arrangements would be a last resort").

[131] We recognize that most broadcasters strongly support lateral hosting, seeking maximum flexibility under our licensing regime. *See, e.g.*, BitPath Multicast Licensing Comments at I, 11, 12; NAB Multicast Licensing Comments at 5; Pearl Multicast Licensing Comments at 5; NAB Aug. 10 *Ex Parte* Letter; Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (filed Oct. 3, 2022) (NAB Oct. 3 *Ex Parte* Letter) (meeting also included representatives from NBCUniversal, Fox corporation and Paramount); Letter from Sally A. Buckman, Counsel, WNET, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (filed Oct. 21, 2022) (WNET Oct. 21 *Ex Parte* Letter); Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (filed Jan. 13, 2023) (NAB Jan. 13 *Ex Parte* Letter). *See also, e.g.*, Letter from Patrick McFadden, Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 1 (filed Feb. 1, 2023) (proposing minimal geographic limits on unrestricted lateral hosting). *But see* Letter from Mary Beth Murphy, Vice President & Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142, at 2 (filed Feb. 23, 2023) (supporting a waiver approach to lateral hosting).

[132] *See, e.g.*, BitPath Multicast Licensing Comments at I, 11, 12; NAB Oct. 3 *Ex Parte* Letter, WNET Oct. 21 *Ex Parte* Letter.

[133] NAB Oct. 3 *Ex Parte* Letter, WNET Oct. 21 *Ex Parte* Letter.

[134] LMS File No. 0000125644.

market, however, were ultimately able to begin the transition without any "lateral" hosting, and the station also retained enough capacity that it has since added yet another 1.0 stream to its lineup.[135]

29. Furthermore, there is potential for abuse in a lateral hosting scenario, particularly given the continuing uncertainty around the ultimate duration of the transition. For instance, preventing the aggregation of excess capacity in such a scenario would require a more complex capacity limitation rule than is supported by our record. This is particularly true given the need to consider not just programming but any ancillary and supplementary services being provided over a station's own facility. In the absence of such protections, a station relying on same-service hosts could potentially use significantly more capacity than is permitted under its license, even while complying with the capacity limit rule adopted today.[136] The record simply does not demonstrate that creating such potential for confusion and abuse is justified by any countervailing need.

30. We will, however, consider requests for special temporary authority in those rare circumstances in which relief may be necessary to ensure that a market can transition effectively. We expect that addressing any potential issues using this process will allow us to monitor the changing state of the market as the transition moves forward and to collect more information about any situations that arise in which there is a technical need for this type of "lateral" flexibility. Indeed, the STA process provided valuable, real-world information that helped inform our decisions in this item. Finally, broadcasters have argued in this proceeding that the appropriate measure of how much programming a 1.0 station is capable of airing is whether any 1.0 station is airing or has previously aired the same or a similar programming lineup at the same resolutions.[137] We agree and we direct Media Bureau staff to review and process any potential STA requests (and the inherent potential of any such requests to expand broadcasters' capacity as described above) in light of this "historical" approach, which we have adopted elsewhere in this Order to limit capacity in the multicast hosting context.[138] Furthermore, as noted above, same-service hosting is limited to a host station's multicast stream (i.e., a host station's own primary stream is not eligible for lateral hosting). And while the Media Bureau will have flexibility to review the particular circumstances of each case, we expect that staff will consider the potential impact on over-the-air availability of programming that has significant viewership (e.g., the stream is ranked in the top 4 in the market or would cause viewers to lose their only source of noncommercial or major network programming) or specifically provides children's programming in the station's service area.[139]

H. Rules Applicable to Multicast Streams Aired on a Host Station

31. With respect to the other ATSC 3.0 transition rules, except as detailed in this Order, we will apply the same rules to simulcast and non-simulcast licensed multicast streams as we currently apply to primary simulcast streams, consistent with our tentative conclusions.[140] These rules are intended to

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[135] WXYZ & WMYD TV Schedules, https://www.wxyz.com/entertainment/television/schedule (last visited Jan. 1, 2023).

[136] *See also supra* para. 13 (discussing the harms inherent to all hosting of streams during the transition).

[137] NAB May 12 *Ex Parte* Letter.

[138] *See supra* para. 18 (implementing limits on hosting capacity). Such requests must clearly identify any programming that would be discontinued in the absence of an STA and explain why there is no reasonable alternative to the requested reliance on a same-service host and how viewer impacts will be minimized (e.g., is the same stream available to viewers in any loss area from another station in the same or adjacent market). STAs will be granted for a period of 180 days and must be subsequently renewed. *See* 74 CFR § 73.1635.

[139] 47 CFR § 73.671.

[140] The rules at issue are those found in sections 73.3801, 73.6029, and 74.782 of the Commission's rules (each entitled "Television Simulcasting"). These include simulcast arrangements and agreements (47 CFR §§ 73.3801(a) and (e), 73.6029(a) and (e), 74.782(a) and (f)); the simulcasting requirement (47 CFR §§ 73.3801(b), 73.6029(b), 74.782(b)); contour, DMA, and community of license coverage requirements (47 CFR §§ 73.3801(d) and (f)(5)-(6), 73.6029(d) and (f)(5)-(6), 74.782(e) and (g)(5)-(6)); MVPD notice requirements (47 CFR §§ 73.3801(h),

(continued….)

protect consumers from service disruption, especially the loss of access to the 1.0 television programming they currently watch, without restricting broadcasters' ability to choose to participate in the voluntary, market-driven transition to ATSC 3.0. We believe these proposals best balance the goal of preserving maximum availability of multicast streams with the reality that broadcasters could simply decline to air multicast streams if our rules are too burdensome.

32. *Coverage rules*. As proposed in the *Next Gen TV Multicast Licensing FNPRM*, we will apply the DMA and community of license coverage requirements to all multicast streams but will not consider those streams when determining whether a station qualifies for expedited processing.[141] Thus, 1.0 multicast streams aired on a host channel must continue to cover the guest station's entire community of license and the host station must be assigned to the same DMA as the originating station.[142] For 3.0 multicast streams aired on a host channel, as with 3.0 primary streams aired on a host channel, only the DMA requirement applies.[143] When determining whether a station seeking to transition is eligible for expedited processing, however, we will continue to ask only whether the primary stream will remain available in 1.0 to at least 95% of a station's current OTA audience.[144]

33. Although commenters generally do not oppose this approach, some commenters support variations to it. A small number of broadcasters suggest that the rule should require only a host in the same DMA without a requirement regarding the community of license. They express concern that it will be challenging in the future for stations to find host partners that can fully cover their community of license.[145] ATVA, on the other hand, contends that no station should receive expedited processing unless all of its multicast streams meet the 95% coverage threshold or if the station pledges to deliver signals to MVPDs.[146] We reject these proposals. With respect to both of these concerns, we emphasize that retaining a station's 1.0 service to its community of license remains our priority under current marketplace conditions.[147] We will review each application – including any unique characteristics of the market involved – as it arises.

34. Finally, as proposed in the *Next Gen TV Multicast Licensing FNPRM*, for children's programming on a multicast stream to count toward the originating station's children's television Core Programming requirement, the multicast stream must either be carried on the same host as the originating station's primary stream or on a host that serves at least 95% of the predicted population served by the

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73.6029(h), 74.782(i)); consumer education provisions (47 CFR §§ 73.3801(g), 73.6029(g), 74.782(h)); and licensing procedures (47 CFR §§ 73.3801(f)(2), 73.6029(f)(2), 74.782(g)(2)). *See Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16103, para. 30, n.97. No commenters specifically addressed these requirements.

[141] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16104-05, paras. 32-33, n.104.

[142] As proposed in the *Next Gen TV Multicast Licensing FNPRM* and noted below in the paragraphs discussing updates to Form 2100, Next Gen TV applications must note the predicted percentage of population within the station's NLSC that will be served by each multicast stream host. *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16104, 16106, paras. 32, 36.

[143] *See Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16104, n.104. No commenter specifically addressed this proposal.

[144] In the *Next Gen TV Report and Order*, the Commission established a presumption that it would favor grant of an application demonstrating that the station would provide ATSC 1.0 simulcast service to at least 95 percent of the predicted population within the station's original NLSC and afford "expedited processing" to such applications. *Next Gen TV Report and Order*, 32 FCC Rcd at 9946, para. 29. *See also* 47 CFR §§ 73.3801(f)(5)-(6), 73.6029(f)(5)-(6).

[145] *See, e.g.*, One Media Multicast Licensing Comments at 15; Pearl Multicast Licensing Comments at 5.

[146] ATVA Multicast Licensing Comments at 13-14.

[147] *Next Gen TV First Report and Order*, 32 FCC Rcd at 9944, paras. 25-26.

applicant's pre-transition 1.0 signal.[148] Commenters do not oppose this proposal, although the Broadcasting Alliance proposed that we combine hosts of multiple "copies" of a multicast stream to determine whether that stream is reaching 95% of the relevant population.[149] While we do not bar stations from airing identical content on multiple hosted multicast streams,[150] we decline to adopt this alternative on the grounds that it would incentivize inefficient use of limited 1.0 capacity.

35. *Licensing*. As proposed in the *Next Gen TV Multicast Licensing FNPRM*, we will apply our licensing process for primary simulcast streams to guest multicast streams aired on a host station.[151] No commenter opposes this proposal. Thus, upon grant of an application, each of an originating station's multicast streams aired as a guest stream on a host will be licensed as an additional temporary channel of the originating broadcaster.[152] We also adopt our unopposed tentative conclusion that commonly owned stations are not required to enter into written agreements for the hosting of either primary or multicast streams,[153] consistent with the process the Bureau uses for handling the hosting of primary streams on commonly owned stations.[154]

36. *Form 2100*. We adopt the *Next Gen TV Multicast Licensing FNPRM*'s proposal to modify our Next Gen TV license application form (FCC Form 2100) to accommodate multicast licensing by collecting information similar to that already collected in the STA process.[155] Broadcasters generally support a requirement to file the same information they currently provide when seeking to transition, though other commenters suggest the filing should be more extensive.[156] NAB asserts that licensees should not have to file any information at all about multicast streams.[157] We reject NAB's argument. We

[148] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16105, para. 34.

[149] Broadcasting Alliance Multicast Licensing Reply at 5-6.

[150] *Supra* note 78.

[151] Under these rules, a Next Gen TV station could seek to obtain separate authorizations for each host station used to air any programming stream and would no longer be limited to the two authorizations contemplated in the *Next Gen TV First Report and Order*. *Next Gen TV First Report and Order*, 32 FCC Rcd at 9953-54, para. 48.

[152] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16105-06, para. 35, citing *Next Gen TV First Report and Order*, 32 FCC Rcd at 9953-54, para. 48.

[153] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16094, n.42.

[154] *Media Bureau Announces That It Will Begin Accepting Next Generation Television (ATSC 3.0) License Applications in the Commission's Licensing and Management System on May 28, 2019*, GN Docket No. 16-142, Public Notice, 34 FCC Rcd 3684, 3685 n.5 (MB 2019).

[155] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16106, para. 36. We direct the Media Bureau to revise Form 2100 as needed to implement these changes, and to process applications filed using Form 2100.

[156] *See, e.g.*, One Media Multicast Licensing Comments at 10 ("[T]here is no reason to impose additional requirements on multicast stream hosting arrangements than what currently apply to primary stream hosting arrangements or what has been collected thus far under the interim STA process."); NCTA Multicast Licensing Comments at 4-5 ("At a minimum, the Commission should require broadcasters to identify, for each market they serve, their partner host station(s); the network affiliation, broadcast standard, and format (HD or SD) for each stream being hosted; and to the extent hosting of non-simulcast streams is allowed, whether the streams are being simulcast on the originating broadcaster's station in the alternate standard."); Pearl TV Multicast Licensing Comments at 9 ("[T]his additional requirement [proposed by NCTA] is unnecessary because of the information already submitted through the STA process or which will be required on Form 2100 should the FCC implement the Further Notice proposals.").

[157] *See, e.g.*, NAB Multicast Licensing Comments at 12-13 (requesting that the Commission not "add new information collection requirements as part of this proceeding"). *See also* Cox Multicast Licensing Comments at 4 (stating that the Commission should "simply add more spaces for broadcasters to list additional host stations – no further information collection is needed").

note that our rules do not prohibit the use of private contractual arrangements for partner stations to air their multicast streams. For regulatory compliance purposes, such streams would be considered multicast streams of the host partner station, not the originator station.[158] To the extent stations seek instead to modify their license to include multicast streams hosted by partner stations, both the Commission and the public need visibility into the basic terms of that hosting relationship. Such transparency will ensure compliance with our rules, particularly compliance with the host capacity limit (*see* section III.D, above.). We therefore will require certain additional information as an addendum to Form 2100 if stations seek to include hosted multicast streams within their license.[159] We also clarify and slightly modify the requirements of our rules governing Form 2100 to reflect the possibility of reliance on multiple hosts.

37. Specifically, applicants must prepare an exhibit identifying each proposed hosted stream and provide the following information about each stream, as broadcast:

- the host station;
- channel number (RF and virtual);
- network affiliation (or type of programming if unaffiliated);
- resolution (*e.g.*, 1080i, 720p, 480p, or 480i);
- the predicted percentage of population within the noise limited service contour served by the station's original ATSC 1.0 signal that will be served by the host, with a contour overlay map identifying areas of service loss and, in the case of 1.0 streams, coverage of the originating station's community of license; and
- whether the stream will be simulcast, and if so, the "paired" stream in the other service.

Finally, the exhibit must either state that the applicant will be airing the same programming that it is airing in 1.0 at the time of the application or identify the station that has aired or is airing the same or a similar programming lineup at the same resolutions on the same type of facility (individual or shared), as well as that station's lineup (with resolutions). This exhibit must be placed on the applicant's public website or in the applicant's online public inspection file if the station does not have a dedicated website,[160] with a link provided in the application. This information is consistent both with that currently collected in STA applications[161] and the approach identified in the *Next Gen TV Multicast Licensing FNPRM*.[162] As with broadcast licenses generally, modifications to this license application or its accompanying exhibit (with respect to the primary or multicast streams) must be preceded by the filing and approval of a new application. Changes to the affiliation or content of a stream, or the elimination of a stream, however, do not implicate the concerns raised in this proceeding if they would not result in the use of additional capacity and if information about the change is easily available to the public. Therefore,

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[158] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16090-91, para. 5.

[159] *See Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16106, para. 36.

[160] *See* https://publicfiles.fcc.gov/. If a station has neither a public website nor an online public inspection file, it will be considered in compliance with this requirement if it publishes the exhibit in a local newspaper identified in its application. Any changes to the exhibit will require publication of the revised exhibit.

[161] *See, e.g.*, *Authorization for Application of WNUV-TV for Modification of License as Amended and Application of WNUV-TV for Legal Special Temporary Authority as Amended*, Letter Order, LMS File Nos. 0000136472 and 0000136473, at 1, 6 (VD June 22, 2021).

[162] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16106, para. 36. While the *Next Gen TV Multicast Licensing FNPRM* did not specifically mention identification of the "pair" of each simulcast stream (that is, the specific stream in the other service that is carrying substantially similar programming), we believe the need for this information logically arises from the question about whether a stream will be simulcast in situations where there is more than one simulcast stream.

in order to streamline this process for both broadcasters and the Commission, such changes may be implemented without prior Commission approval. They need only be reflected in a timely update to the exhibit that the applicant makes available on its public website or in the applicant's online public inspection file and in an email notice to the Chief of the Media Bureau's Video Division.

38. *Timing*. As proposed in the *Next Gen TV Multicast Licensing FNPRM*, the rules adopted in this Order will apply until and unless the Commission eliminates the mandatory local simulcasting requirement.[163] Commenters generally support this approach, which will preserve existing 1.0 viewership while giving broadcasters the flexibility to transition to 3.0.[164] MVPD commenters support the proposed timing with respect to simulcast multicast streams, but propose that the rule permitting non-simulcast 1.0 multicast streams should sunset after five years.[165] Broadcasters oppose this proposal, arguing it is contrary to the public interest.[166] We agree that establishing a prescribed sunset for the non-simulcast multicast licensing rules adopted in this Order could lead to a sudden reduction in the availability of 1.0 programming, harming consumers. We therefore decline to adopt a sunset of the non-simulcast multicast and will continue to encourage broadcasters to maximize their 1.0 service throughout the transition in order to minimize the disruption to consumers.

I. Substantially Similar Rule

39. Based on the existing record, we retain the substantially similar rule at this time and extend the sunset date to July 17, 2027.[167] In the *Sunsets FNRPM,* we sought comment on whether we should retain the substantially similar rule or permit it to sunset in July, 2023.[168] After consideration of the state of the transition reflected in the record of this proceeding, we find this rule continues to be necessary at this time for the same reasons it was adopted, to protect consumers by ensuring that OTA viewers who rely on 1.0 are able to continue watching the same programming they watch today, as well as any new programming offerings on a broadcaster's primary channel that can be reasonably provided in 1.0 format.[169] Based on the current record, we find that broadcasters' market incentives alone are insufficient to protect OTA viewers from potential loss of 1.0 service. Furthermore, we find that there has not yet been a sufficient shift in the marketplace that would justify elimination or modification of the substantially similar rule. Moreover, we see no evidence on the record that the substantially similar rule is currently impeding, or is likely in the near future to impede, the provision of innovative 3.0 features

[163] *Next Gen TV Multicast Licensing FNPRM*, 36 FCC Rcd at 16106, para. 37.

[164] *See, e.g.*, NAB Multicast Licensing Comments at 3; Cox Multicast Licensing Comments at 5; Pearl Multicast Licensing Comments at 7.

[165] NCTA Multicast Licensing Comments at 4; ATVA Multicast Licensing Comments at 12; NTCA Multicast Licensing Reply at 3.

[166] APTS Multicast Licensing Reply at 3; NAB Multicast Licensing Reply at 8.

[167] *See* Appendix B – Final Rules; 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1). We note that the requirement to simulcast in 1.0 is intended to be temporary and will be eliminated when the transition to 3.0 is complete. *First Next Gen TV Report and Order*, 32 FCC Rcd at 9938, para. 14.

[168] *Sunsets FNPRM*, 2022 WL 2290237 at *9, para. 24.

[169] The Commission has explained that it will not apply the substantially similar rule to certain enhanced capabilities that cannot reasonably be provided in ATSC 1.0 format. *See First Next Gen TV Report and Order*, 32 FCC Rcd at 9943, para. 23. These capabilities include "hyper-localized" content (e.g., geo-targeted weather, targeted emergency alerts, and hyper-local news), programming features or improvements created for the 3.0 service (e.g., emergency alert "wake up" ability and interactive programming features), enhanced formats made possible by 3.0 technology (e.g., 4K or HDR), and any personalization of programming performed by the viewer and at the viewer's discretion. *Id*. *See also* 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1). While some of these capabilities may be theoretically possible within the ATSC 1.0 framework, they are not currently part of the ATSC 1.0 standards, are unlikely to be included in current consumer equipment, and as such cannot reasonably be provided via ATSC 1.0. *First Next Gen TV Report and Order*, 32 FCC Rcd at 9943, para. 23, n.78.

and content. The rule as it stands affords significant flexibility for broadcasters to innovate and experiment with new programming features using 3.0 technology because it does not require broadcasters to duplicate enhanced content or features that cannot reasonably be provided in the 1.0 format. Furthermore, broadcasters provide no reason why programming aired on the 3.0 primary stream that can reasonably be provided in 1.0 format should not be provided in such format. On the other hand, eliminating the substantially similar rule at this time, in light of the current state of the transition, poses a risk of harm to OTA viewers who rely on 1.0, particularly vulnerable consumers, who without the rule could be forced to either purchase new 3.0 equipment or lose access to stations' primary programming.

40. The purpose of the substantially similar rule is to give effect to the underlying requirement to "simulcast" 3.0 programming in 1.0, protecting 1.0 viewers from losing access to a Next Gen TV station's programming when that station transitions its facility to 3.0.[170] While the underlying simulcast requirement that a Next Gen TV broadcaster must continue to air a primary 1.0 signal (when deploying that signal in 3.0) ensures 1.0 viewers continue to receive one free OTA TV signal during the transition, the substantially similar rule ensures that 1.0 viewers actually receive the same primary programming as that aired on the 3.0 channel, including new programming to the extent that such programming can reasonably be provided in 1.0 format. Thus, these rules work in tandem to ensure that viewers are protected during the transition period. As the Commission explained in the 2017 *First Next Gen TV Report and Order*, "it is important not only to require that television broadcasters continue to broadcast in the current ATSC 1.0 standard while ATSC 3.0 is being deployed, but also that they continue to air in ATSC 1.0 format the programming that viewers most want and expect to receive. We seek to ensure that broadcasters air their most popular, widely-viewed programming on their 1.0 simulcast channels so that viewers are not forced to purchase 3.0 capable equipment simply to continue to receive this programming rather than because they find the ATSC 3.0 technology particularly attractive."[171]

41. The record of this proceeding does not provide a basis for us to conclude that the substantially similar rule is no longer needed at this time for the same purposes it was originally adopted. Without the substantially similar rule, Next Gen TV broadcasters would be free to air the most desirable programming, including popular existing programming and new program offerings that could reasonably be provided in 1.0 format, only on their 3.0 primary programming stream.[172] This could create two different tiers of free, OTA television service, which we find would not be in the public interest.[173] We

[170] *See First Next Gen TV Report and Order*, 32 FCC Rcd at 9943, 9944, para. 22, 25.

[171] *First Next Gen TV Report and Order*, 32 FCC Rcd at 9944, para. 25.

[172] *Sunsets FNPRM*, 2022 WL 2290237 at *10, para. 26. *See* PK/OTI Sunsets Comments at 8 ("Without the substantially similar rule, broadcasters are not required to offer anything beyond a single standard definition broadcast on their ATSC 1.0 airwaves.").

[173] In recognition of the capacity constraints imposed by the transition, the Commission has already given broadcasters flexibility with respect to the resolution and coverage of 1.0 primary streams, and the availability of 1.0 multicast streams. In contrast to these situations, 1.0 capacity constraints do not prevent the provision of substantially similar programming, particularly since Next Gen TV broadcasters are not required to simulcast programming that cannot reasonably be aired in 1.0 format. NAB contends the Commission's discussion of the potential development of two tiers of programming ignores that "[t]here already are two tiers of programming service: pay and free." NAB Sunsets Comments at 14. NAB asserts that "the Commission does not require other actors in the communications marketplace, including those with which broadcasters compete, to intentionally slow the pace of innovation when they upgrade their technology to avoid creating different tiers of service." *Id*. (citing the 5G context). NAB further states that "[b]roadcasters are the only entities the Commission regulates that are required to provide a free service." *Id*. at 14-15. We remind broadcasters that, as trustees of the public airwaves, they are required by statute to serve the "public interest, convenience, and necessity." 47 U.S.C. § 309(k)(1). Next Gen TV stations may have only one primary programming stream, which they are required to simulcast in 1.0. Finally, we note that broadcasters are not the only regulatees with public interest obligations. For example, cable operators and satellite carriers are required to carry qualified broadcast stations that request mandatory carriage. 47 U.S.C. §§ 338, 534, 535. Also, satellite carriers are required to reserve a percentage of channel capacity for

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agree with NCTA and PK/OTI that this would "plac[e] viewers at risk of losing access to popular programming should they be unwilling or unable to pay for this new [3.0] equipment."[174] In particular, PL/OTI notes that lower-income consumers could be especially vulnerable.[175] Furthermore, at this stage of the transition, we agree that many consumers may find there to be a lack of affordable 3.0 TV equipment.[176]

42. We find that broadcasters' market incentives alone cannot be relied upon to ensure that all 1.0 viewers are able to continue to access stations' primary programming without incurring significant costs; this is particularly of concern with respect to vulnerable consumers who are often slow to adopt new technology.[177] We recognize that broadcasters may have strong incentives to offer substantially similar simulcast programming early in the transition. Broadcasters contend that the market will protect all viewers,[178] but as discussed below these assertions often come with qualifications and caveats. Broadcasters have willingly made significant investments in ATSC 3.0 technology, claiming it is necessary to remain competitive in the video marketplace.[179] Thus, while they do have incentives to provide their most popular programming to all of their viewers, they also have incentives to promote their ATSC 3.0 offerings. We recognize that broadcasters do incur some costs by offering programming in both 1.0 and 3.0 to ensure uninterrupted service to current OTA viewers. If the transition progresses and the number of OTA viewers who rely on 1.0 declines, broadcaster incentives to serve 1.0 viewers may weaken as the benefits shrink relative to those costs. These weakened incentives would be a direct result of the success of the transition as more and more OTA viewers migrate to 3.0. Some broadcasters state

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noncommercial educational or informational programming, 47 U.S.C. § 335(b)(1); and cable operators are required to set aside channel capacity for commercial use by unaffiliated video programmers. 47 U.S.C. § 532.

[174] NCTA Sunsets Comments at 3; PK/OTI Sunsets Reply at 4.

[175] *See*, *e.g.*, PK/OTI Comments at 8 (stating that without the substantially similar rule "[a] large proportion of lower-income consumers—and even many other consumers who recently purchased a non-compatible TV—could end up with no access to their local over-the-air channels, including what remains of local broadcast station public interest obligations concerning local news and emergency weather and other alerts").

[176] The record indicates, as of August 8, 2022, there were approximately 120 models of television sets with 3.0 tuners available in the United States from four manufacturers, but these are mid- to high-end TV sets. *See, e.g.*, Pearl Sunsets Comments at 14; NAB Sunsets Comments at 4-5; NCTA Sunsets Comments at 3. According to Pearl, the lowest cost 3.0 TV set is available to consumers at retail for $549.00. *See* Pearl Comments at 15 (citing the Sony X80K 4K HDR LED TV with smart Google TV, https://electronics.sony.com/tv video/televisions/all-tvs/p/kd43x80k (last visited Aug. 8, 2022)). The lowest cost separate 3.0 receiver (gateway device) is available at retail for $199. *See* SiliconDust HDHomeRun 4K Flex, https://www.silicondust.com/product/hdhomerun-flex-4k/ (last visited Dec. 13, 2022). *See also* NAB Comments at 5.

[177] *See, e.g.*, BitPath Sunsets Comments at 15-16; CMG Sunsets Reply at 3; Evoca Sunsets Reply at 5-6; Graham Sunsets Reply at 4-5; NAB Sunsets Comments at 13; Pearl Sunsets Comments at 22; Scripps Sunsets Reply at 5. We note that if it were true that broadcasters have no incentive to favor their 3.0 offerings, then our rule would simply codify broadcasters' commitment and would not impede any innovations.

[178] *See, e.g.*, Pearl Sunsets Comments at 22 ("Broadcaster revenue is maximized by reaching the maximum number of viewers. Thus, broadcasters would only harm their own bottom line by restricting their most popular programming to a subset of their viewership. The FCC does not need a rule to require broadcasters to act in their own financial interest."); CMG Sunsets Reply at 3-4 ("[A]n advertiser-supported free-to-the viewer service, broadcasters have a strong incentive to air popular programming on their most widely viewed programming stream."); BitPath Sunsets Comments at 15 ("It is a business imperative for broadcasters to make the best programming, which closely corresponds to the most expensive programming, available to the widest possible audience.").

[179] *See, e.g.*, NAB Sunsets Comments at 16 (stating that broadcasters "view ATSC 3.0 as critical to the future success of their industry and their ability to serve their customers"); Pearl Sunsets Reply at 7 (stating that ATSC 3.0 will "enhance the long-term viability of free, over the air broadcast television").

that they have every incentive to "maximize" viewership,[180] but those arguments more correctly appear to focus on maximizing profits, which will not necessarily support the needs of OTA 1.0 viewers for the length of the transition, particularly when that audience is split between two different services.[181] Broadcaster commenters acknowledge that even these incentives hold only "while the vast majority of viewers continue to watch [1.0 signals]."[182] Given our decision herein to extend the sunset date, the Commission can consider the status of incentives based on the viewership at the time the requirement is set to expire. The current record demonstrates that the substantially similar element of the simulcast rule remains important to the transition at this time, in order to provide certainty to those who continue to rely on 1.0.

43. Furthermore, most broadcasters are not committing to make new programming available to all viewers.[183] Indeed, many seem to indicate that, if the substantially similar rule were eliminated, they would provide new, 3.0-exclusive programming on their primary streams even if such programming could reasonably be provided in 1.0 format.[184] We recognize that broadcasters are incurring costs by simulcasting and are eager to complete the transition to pursue higher OTA viewership and new revenue opportunities (via broadcast internet services) in the long term.[185] Thus, it is not surprising that

[180] *Supra* note 184.

[181] There is no evidence in the record regarding the financial impact on broadcasters of losing a declining number of 1.0 OTA viewers, particularly older and lower income viewers who may not be favored by advertisers. We also note that many broadcasters receive significant revenue from retransmission consent fees, which would not seem to be directly impacted by any loss in OTA viewership. *See* S&P Global, *US TV station industry total revenue projections, 2009-2027* (June 2022) (stating that, in 2021, retransmission consent fees made up 41% of TV station revenues, while spot advertising made up 51%, and digital/online revenue made up 8%.); Nielsen, *OTA + OTT: The new TV Bundle* (May 2022), https://www.nielsen.com/insights/2022/ota-ott-the-new-tv-bundle/ (stating that 57% of TV households have traditional MVPD service, while only 15% of TV households have OTA TV service, and 27% of TV households are broadband-only households).

[182] *See, e.g.*, Scripps Sunsets Reply at 5 ("[T]here would be no business value, and rather a significant cost, to ceasing distribution of a station's most desired programming in ATSC 1.0 while the vast majority of viewers continue to watch via the legacy standard."); NAB Sunsets Comments at 13 ("Broadcasters cannot afford to eliminate the majority of their OTA audience by shifting their most popular programming exclusively to ATSC 3.0."); Pearl Sunsets Reply at 2 ("[B]roadcasters' market incentives virtually guarantee that they will provide their most popular, widely viewed programming on their 1.0 simulcasts, which by any measure remain the most widely viewed streams.").

[183] *But see* Graham Sunsets Reply at 5 (stating that it "is fully committed to ensuring that its stations' programming continues to reach all viewers in their markets, not only those that are able to access programming broadcast in the 3.0 standard").

[184] *See, e.g.*, NAB Sunsets Comments at 14 (stating the most likely result of sunsetting the substantially similar requirement is not that broadcasters will alter the programming transmitted on their ATSC 1.0 signals; rather it is that broadcasters take the opportunity to try different programming or features on their ATSC 3.0 signals to entice viewers to voluntarily upgrade their equipment); Graham Sunsets Reply at 4 ("With the requirement lifted, broadcasters can do the sort of experimenting and innovating with unique NextGen TV content and features that will ultimately drive adoption of ATSC 3.0 technologies and NextGen TV programming."); Scripps Sunsets Reply at 6 ("[R]emoval of the substantially similar rule would allow broadcasters to expand offerings that make full use of the enhanced capabilities of ATSC 3.0."). As discussed below, to the extent such 3.0 content cannot reasonably be provided in 1.0, broadcasters are free to provide such programming only in 3.0 under the current rule. However, if such content can reasonably be provided in 1.0, then it illustrates the benefits of the current rule for viewers. *See also supra* Section III.C (noting that a Next Gen TV station that converts its own facility to 3.0 can "experiment" with non-simulcast multicast streams).

[185] *See* BitPath Sunsets Comments at 8 (stating the transition "is expensive and cumbersome. No broadcaster wants the transition to go on one hour longer than necessary. But the sine qua non of an end to hosting is widespread adoption of ATSC 3.0 receivers."). *See also* NAB Sunsets Comments at 16 ("To offer competitive services, and to

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broadcasters are already contemplating "trade-offs" like the "loss or degradation of 1.0 programming" in the near future absent regulatory requirements to the contrary.[186] Given the above, and based on the current record, we are not convinced market incentives alone will protect viewers who rely on 1.0. Moreover, we remind broadcasters that, as trustees of the public airwaves, they have a statutory obligation to serve the public interest, even where market incentives might temporarily push in a contrary direction.[187]

44. Furthermore, we find that the substantially similar rule is not presently impeding innovation in broadcast programming.[188] Broadcasters assert that the rule is preventing them from innovating with 3.0 content and features.[189] However, nothing in the current record supports this.[190] The current rule expressly allows broadcasters to innovate and experiment with new, innovative Next Gen TV programming features, including on their primary streams.[191] Broadcasters identify only two specific examples of potential innovation hampered by the rule, neither of which withstands scrutiny. First, Pearl seems to suggest that the rule prevents broadcasters from airing

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offer new services that may generate additional revenue to support broadcasters' ability to serve their local communities, broadcasters must make this transition work.").

[186] *See, e.g.*, BitPath Sunsets Comments at ii-iii ("It is inevitable that tradeoffs will have to be made to accomplish a non-backward compatible rollout of new technology with no transition channels. The Commission should give broadcasters maximum flexibility to pursue hosting in a way that eliminates loss or degradation of 1.0 programming where possible and minimizes it when it is inevitable.").

[187] *See* 47 U.S.C. § 309(a) (requiring the Commission to determine, in the case of applications for licenses, "whether the public interest, convenience, and necessity will be served by granting such application"); 47 U.S.C. § 307(b) (requiring the Commission to "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").

[188] *See* ATVA Sunsets Comments at 6; NCTA Sunsets Reply at 4; PK/OTI Sunsets Comments at 8-9.

[189] *See* Graham Sunsets Reply at 4 ("With the requirement lifted, broadcasters can do the sort of experimenting and innovating with unique NextGen TV content and features that will ultimately drive adoption of ATSC 3.0 technologies and NextGen TV programming."); NAB Sunsets Comments at 14 (stating that broadcasters seek "the opportunity to try different programming or features on their ATSC 3.0 signals to entice viewers to voluntarily upgrade their equipment"); BitPath Sunsets Comments at 16 ("[A] government rule that inhibits broadcasters from introducing, at appropriate times, new or dissimilar programming to take advantage of the full capabilities of new technology actually dampens the pro-consumer benefits of ATSC 3.0."); Scripps Sunsets Reply at 6 ("[R]emoval of the substantially similar rule would allow broadcasters to expand offerings that make full use of the enhanced capabilities of ATSC 3.0."). *See also* Airwavz Sunsets Reply at 1 ("sunset 'substantially similar' content on legacy ATSC 1.0 by July 2023").

[190] *See* ATVA Sunsets Comments at 6 ("Broadcasters have suggested that they need to eliminate the rule in order to offer enhanced services. To date, however, they have failed to explain with specificity what the rule prevents them from doing."); NCTA Sunsets Reply at 4; PK/OTI Sunsets Comments at 8-9. *See* 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1). Next Gen TV broadcasters do not have to duplicate enhanced content or features that cannot reasonably be provided in the 1.0 format. *First Next Gen TV Report and Order*, 32 FCC Rcd at 9943, para. 23. As stated above, this includes: "hyper-localized" content (e.g., geo-targeted weather, targeted emergency alerts, and hyper-local news), programming features or improvements created for the 3.0 service (e.g., emergency alert "wake up" ability and interactive programming features), enhanced formats made possible by 3.0 technology (e.g., 4K or HDR), and any personalization of programming performed by the viewer and at the viewer's discretion. *See* 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1).

[191] *See id*. Stations broadcasting in 3.0 over their own facilities can experiment with innovative 3.0 multicast streams that are not subject to simulcast requirements. *Supra* Section III.C.

> "a 'barker' or demo channel of 3.0 programming, showcasing the new technology and demonstrating how viewers can unlock the many advanced features that ATSC 3.0 makes possible."[192]

We observe that a "demo channel" would presumably not be a station's primary stream.[193] As for a multicast stream, we reiterate our clarification that any Next Gen TV station that converts its own facility to 3.0 (including a 3.0 host) could air a "demo" multicast stream, including content from its guest partners and other stations in the market, without simulcasting such a stream in 1.0.[194] Second, Graham seems to suggest that the rule prevents broadcasters from airing "alternate interactive programming or expanded local programming" only in 3.0.[195] It is unclear what Graham means by "expanded local programming" as a unique 3.0 feature, but the substantially similar rule expressly permits "hyper-local news" and "interactive program features."[196] To the extent any "expanded local programming" provided on a primary stream could reasonably be provided in 1.0 format, we agree such programming must be simulcast in substantially similar fashion in 1.0 format to comply with the rule. However, to the extent programming can reasonably be provided in 1.0 format, we fail to see how such programming could be considered innovative programming reliant on the enhanced capabilities of 3.0 technology.

45. As a result of the current status of the transition reflected in the record, we conclude that the sunset of the substantially similar rule is unnecessary at this time. We note, however, that the pace of the transition has necessarily been impacted by the recent pandemic. As the transition continues and the consumer equipment market evolves, the impact of eliminating or modifying the substantially similar requirement may change. We therefore find that it would be appropriate to revisit this issue in the future once the transition has had more time to advance. Moreover, we anticipate that the Commission's recently announced "Future of TV" public-private initiative, which will be led by the National Association of Broadcasters (NAB), will provide additional information on the pace and nature of the transition.[197] These insights, including any proposals discussed by partnership stakeholders in this initiative, can help inform any potential changes to the substantially similar requirement. Accordingly, we adopt a new sunset date of July 17, 2027. Given the ongoing transition, we believe at this time that this is an appropriate sunset period.[198] This date will allow for the opportunity of material changes to the

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[192] *See* Letter from Gerard J. Waldron, Counsel to Pearl TV, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-142 (filed Apr. 11, 2022) at 2; Pearl Multicast Licensing Comments at 11.

[193] We note, however, that "demo" programming aired on a primary stream would likely be covered by the rule's exception for "advertisements, promotions for upcoming programs, and programming features that are based on the enhanced capabilities of ATSC 3.0." *See* 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1).

[194] *Supra* Section III.C. To the extent that 3.0 guests can show good cause why they need to license a "demo" channel on a host (rather than having the host air such demo channel), we will consider limited waiver requests to license such non-simulcast 3.0 multicast guest streams.

[195] Graham Sunsets Reply at 5.

[196] *See* 47 CFR §§ 73.3801(b)(1)(i)-(ii), 73.6029(b)(1)(i)-(ii), 74.782(b)(1)(i)-(ii).

[197] Press Release, Federal Communications Commission, FCC Chairwoman Announces Launch of 'Future of TV' Public-Private Initiative Focused on Transition to NextGen TV (Apr. 17, 2023).

[198] While, at present, a small number of converter devices that work with the television sets in viewers' homes are available for purchase, we expect more will come to market in coming years and that the price should come down. For example, another 3.0-to-1.0 set-top-box has recently been announced by ADTH, which would be the lowest priced converter device to date. According to ADTH, its "NEXTGEN TV Box" is scheduled to ship in July 2023. It costs $119.99, but it is available for pre-order at the discounted price of $79.99 for a limited time. Atlanta DTH (ADTH), Press Release, "ADTH and Tolka Awarded First Certification as NEXTGEN TV Upgrade Accessory Receiver," (May 9, 2023); https://adth.com/adth-and-tolka-awarded-first-certification-as-nextgen-tv-upgrade-accessory-receiver/. The Commission can consider the availability and cost of such devices in subsequent reviews of the substantially similar rule.

transition such that a subsequent review is warranted. Consistent with the previous sunset, the Commission will initiate a review approximately one year before the requirement is set to expire to seek comment on whether it should be extended based on marketplace conditions at that time. This balanced approach will provide 1.0 viewers with needed certainty while giving broadcasters an additional opportunity to demonstrate that the substantially similar requirement should be eliminated or modified.

J. Requirement to Comply with the ATSC A/322 Standard

46. Based on the existing record, we retain the A/322 requirement at this time and extend the sunset date to July 17, 2027.[199] In the *Sunsets FNPRM,* we sought comment on whether we should retain the requirement that Next Gen TV broadcasters' primary video programming stream must comply with the ATSC A/322 standard and, if so, for how long.[200] In response to the record, we find the A/322 requirement remains necessary to protect consumers and other stakeholders. We further find that the rule does not presently impede broadcasters' ability to innovate. As discussed below, the record shows that the standard itself provides broadcasters with significant flexibility, and the requirement to comply with the standard applies only to a broadcaster's primary programming streams. Consistent with the rule, broadcasters have ample opportunity to innovate with other broadcast streams, as well as with non-broadcast 3.0 services (also known as Broadcast Internet).

47. We find that the A/322 requirement remains essential at this time for protecting both innovators and investors in the 3.0 space, allowing stakeholders to develop and purchase equipment with confidence. As Pearl TV notes, the rule gives "key certainty" to television receiver manufacturers, affording them the confidence to build Next Gen TV equipment and bring it to market knowing that it will reliably work with 3.0 signals now and in the future.[201] It likewise protects consumer investments in 3.0 technology by ensuring that 3.0 TV sets and other 3.0 equipment they purchase are, and will remain, compatible with primary 3.0 signals.[202] We agree with LG that "[c]onsumers have purchased ATSC 3.0-enabled equipment with the good faith expectation that it will be able to properly receive and decode an ATSC 3.0 signal not just at the time of purchase, but for years to come."[203] For similar reasons, the rule will also benefit MVPDs as they begin to receive and retransmit 3.0 broadcast signals to their subscribers.[204] Indeed, broadcasters themselves benefit from the certainty the rule provides, by knowing

[199] *See* Appendix B – Final Rules; 47 CFR § 73.682(f)(2).

[200] *Sunsets FNPRM*, 2022 WL 2290237 at *11, para. 30.

[201] Pearl Sunsets Reply at 4-5 ("Pearl agrees that the requirement provides key certainty to device manufacturers who are working to scale up the retail market for ATSC 3.0-compatible devices."). *See also, e.g.*, LG Sunsets Comments at 6 ("A/322 allows device manufacturers to confidently develop their products and bring them to market."); NAB Sunsets Comments at 12-13 (stating the rule "has been helpful in encouraging television manufacturers to design and build television sets that incorporate ATSC 3.0 receivers").

[202] *See, e.g.*, CTA Sunsets Comments at 8 ("Sunsetting the A/322 standard requirement could … jeopardize the provision of NEXTGEN TV as a free and universally available digital broadcast television service."); LG Sunsets Comments at 5 ("By not permanently incorporating A/322 into its rules, the Commission risks stranding consumers who have already purchased ATSC 3.0-enabled devices or disenfranchising consumers who purchase devices capable of receiving some, but not all, ATSC 3.0 signals.").

[203] LG Sunsets Comments at 1.

[204] *See* NCTA Sunsets Comments at 5 ("[W]ithout a requirement to follow A/322, 'device manufacturers and MVPDs may not be able to reliably predict what signal modulation a broadcaster is using' which could 'cause manufacturers to inadvertently build equipment that cannot receive Next Gen TV broadcasts or could render MVPDs unable to receive and retransmit the signals of Next Gen TV stations.'") (quoting *First Next Gen TV Report and Order*, 32 FCC Rcd at 9980, para. 99); LG Sunsets Comments at 6 ("MVPDs also rely on the A/322 requirement to ensure that the broadcast signals they receive over-the-air are free from interference. If MVPDs do not know or cannot reliably predict the transmission scheme a broadcaster is using, they may not be able to properly receive the broadcaster's signal, which in turn would limit their ability to provide the signal on their systems, thereby causing the public interest to suffer.").

that every viewer in their markets who purchases a 3.0 set will be able to receive their primary programming.[205] Compliance with A/322 may also help prevent harmful interference to and by broadcasters, which benefits every stakeholder and consumer.[206] Given these benefits, almost all commenters support retention of the A/322 rule.[207] We agree with LG that "if a broadcaster used a standard other than A/322 for transmission of its primary broadcast stream, consumers would be unable to obtain the broadcaster's programming because support for that bespoke standard would not be incorporated into the consumers' devices."[208]

48. Furthermore, the record does not demonstrate any current or likely harms arising from the rule at this time.[209] The only commenter to oppose even an extension of the requirement, One Media, identifies no harms associated with this specific rule and makes no effort to grapple with its benefits. Instead, One Media contends that broadcasters should not have "to keep coming back to seek government approval each time the standard changes" and should not have "standards codified into their services' rules" but should instead simply be required to avoid interference.[210] With respect to the first concern, the Commission has and will independently monitor the evolution of the ATSC 3.0 standard and will act to update our rules as necessary and appropriate, as we do in this Order. As for One Media's general objection to codified standards, adoption of A/322 into our rules will ensure that broadcasters are serving the public interest, for the reasons above.[211]

49. Ultimately, we find that the current record does not support sunsetting the A/322 standard at this time. The rule currently provides needed protection to consumers, while also affording significant flexibility to broadcasters. Nevertheless, we agree with commenters that urge the Commission to continue to monitor the marketplace and the standard as they develop.[212] Accordingly, in order to align

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[205] WNET Sunsets Reply at 5 (asserting that "sunsetting the requirement now could lead to confusion, particularly if a broadcaster were to use its spectrum to broadcast a service that does not use the A/322 standard"); LG Comments at 6 (stating that A/322 "ensures that all broadcasters operate from the same ATSC 3.0 playbook").

[206] *See* LG Sunsets Comments at 5 ("A/322 ensures that an ATSC 3.0 signal is reliably transmitted and received, as it describes the interference characteristics of the signal and ensures that it does not interfere with ATSC 1.0 signals or other 3.0 signals. Thus, to ensure a stable, reliable, and predictable RF environment, the Commission should incorporate A/322 into its rules permanently."). *See also* Qualcomm Sunsets Comments at 9 (stating that "5G Broadcast signals and ATSC 3.0 signals can co-exist over the same six-megahertz channel via time-division multiplexing (TDM). Since broadcasters are required to comply with the A/322 standard, Qualcomm used the characteristics of that standard to ensure successful co-existence."). *But see* ONE Media Sunsets Comments at 16 (stating that "[t]he interference criteria currently applicable to broadcasters are and will remain more than adequate to meet the goal of non-interference").

[207] *See, e.g.*, CTA Sunsets Comments at 2; LG Sunsets Comments at 1; NAB Sunsets Comments at 12-13; NCTA Sunsets Comments at 5-6; Pearl Sunsets Reply at 4-5; Qualcomm Sunsets Comments at 1-2; Scripps Sunsets Reply at 7; WNET Sunsets Reply at 5; Rohde & Schwarz Sunsets Reply at 3.

[208] LG Sunsets Comments at 5.

[209] *See, e.g.*, NAB Sunsets Comments at 12 ("To date, the Commission's approach [A/322 rule] has not interfered with broadcasters' efforts to deploy ATSC 3.0 service.").

[210] ONE Media Sunsets Comments at 16. Airwavz.tv also references A/322, but appears to be conflating the two rules scheduled to sunset in 2022. We read Airwavz.tv's comments as supporting the sunset of the substantially similar rule. Airwavz Sunsets Reply at 1 (stating it "is in favor of the FCC permitting the ATSC A/322 standard to sunset 'substantially similar' content on legacy ATSC 1.0 by July 2023"); *supra* note 191.

[211] *See supra* para. 47.

[212] The *Sunsets FNPRM* sought comment on whether to update our rules to incorporate the 2021 version of the A/322 standard. *Sunsets FNPRM*, 2022 WL 2290237 at *12, para. 32. Commenters on this issue support updating our rules, but pointed out that a more recent version of A/322 was published by ATSC in March 2022. ATSC Comments at 6; LG Sunsets Comments at 8. However, since the comment period closed, there have been two more updates to A/322, and we have not received any comments about this new version. *See* ATSC A/322:2022,

(continued….)

this review with that of the substantially similar requirement, we adopt a new sunset date of July 17, 2027. As noted above, the Commission will initiate a review approximately one year before the requirement is set to expire to seek comment on whether it should be extended based on marketplace conditions at that time. This balanced approach will provide needed certainty while also providing an additional opportunity to demonstrate that the A/322 standard should be eliminated or modified.

IV. FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

50. With this Further Notice of Proposed Rulemaking, we seek to further our understanding of the current marketplace for ATSC 3.0 Standard Essential Patents (SEPs) and the ability of third parties to develop products that rely upon them. As the Commission has previously observed in this proceeding, the Advanced Television Systems Committee (ATSC), which developed the ATSC 3.0 standard, requires patent owners to disclose that they hold essential patents and to commit to licensing them on reasonable and non-discriminatory (RAND) terms.[213] The Commission decided in 2017 that "[w]ith no evidence of patent licensing issues, … it [was] premature to impose regulations on the private licensing marketplace."[214] After reviewing the record developed in response to the *Sunsets FNPRM*, we invite additional comments about both the specific issues raised below and the general state of the market. This will inform the Commission's consideration of its authority to act on these issues, as well as the need for, appropriateness of, and potential benefits of rules governing the RAND licensing of SEPs.

51. A number of commenters identify issues with the current ATSC 3.0 patent marketplace and encourage the Commission to "closely monitor" the market or even to immediately adopt Commission rules formalizing RAND requirements for SEPs. The Alliance for Automotive Innovation (AAI), for example, explains that "[t]he ability to license patents declared essential to technical standards on reasonable and non-discriminatory…terms is critical to enabling automotive companies to deploy new technologies."[215] However, they contend that, despite the ATSC RAND requirement, "some ATSC 3.0 SEP holders have refused to license to some willing implementers on RAND terms."[216] AAI thus proposes that the Commission not just monitor the market to ensure compliance with the existing ATSC requirements, but also actively inquire into the licensing practices of SEP holders and their representatives.[217] Likewise, other commenters urge the Commission to take an active role.[218] Finally, Public Knowledge/Open Technology Institute (PK) goes further, proposing that the Commission should immediately adopt enforceable RAND requirements for SEPs.[219] PK argues that reliance on third party

(Continued from previous page)
"Physical Layer Protocol" (published November 24, 2022); https://www.atsc.org/atsc-documents/type/3-0-standards/. Therefore, we decline to update our rules at this time and will seek comment on this issue in a future proceeding.

[213] *Sunsets FNPRM*, 2022 WL 2290237 at *3, note 29 (citing ATSC's Patent Policy, Doc. B/04 at https://www.atsc.org/policies/policy-documents/) ("It shall be the policy of [ATSC] that Essential Claims included in ATSC Specification Documents be available to implementers on reasonable and non-discriminatory terms.")).

[214] *First Next Gen TV Report and Order*, 32 FCC Rcd at 9981, n.300.

[215] AAI *Ex Parte* at 2.

[216] *Id*. at 3.

[217] *Id*.

[218] *See, e.g.*, Airwavz.tv Sunsets Reply at 7 (specifically expressing concern about the potential fees charged for access to ATSC 3.0 "patent pools," like the one coordinated by commenter MPEG LA, which function as "one-stop shops" for essential patents); NCTA Sunsets Comments at 6 (contending, without providing evidence of abuse, that the Commission should "respond as necessary to evidence of licensing abuses, which could result in an unfair windfall to patent owners and higher costs for consumers."); V Box Communications Sunsets Comments at 3 ("Lack of [information about] patent licensing required and costs information may result in delays with final end-user products arrival on the market.").

[219] PK Sunsets Comments at 12; PK Sunsets Reply at 7.

enforcement of the ATSC RAND requirement is insufficient. They note that the standard leaves resolution of patent disputes to the courts but contend that third party enforcement may not always be possible or effective, as courts must find that a disclosure and licensing commitment like ATSC's was actually intended to bind members against third parties.[220] Furthermore, courts would look to the intent of the contracting parties, not broader case law, when interpreting the relevant terms in ATSC's policy, meaning the very definition of "reasonable and non-discriminatory" could be up for debate.[221] PK therefore proposes that the Commission adopt rules of its own.

52. On the other hand, several other commenters oppose Commission involvement in what they describe as a still-nascent market showing no signs of market failure.[222] Other commenters contend that adoption of RAND requirements by the Commission is unnecessary at best and potentially even harmful to the consumer market for ATSC 3.0 devices.[223] We seek additional comment on the state of this market, particularly from the perspective of parties, or the representatives of parties, that do not hold SEPs but have licensed or attempted to license them. Are SEP holders complying with the ATSC RAND requirements? If not, how are disputes currently resolved? Are the existing ATSC RAND requirements imposing any adverse economic impacts? Why or why not? Patent pool operator MPEG LA states that it is unaware of any SEP outside of its ATSC 3.0 patent pool,[224] and the Commission is not aware of any similar alternative patent pool. AAI claims that MPEG LA is focused exclusively on "downstream" users of SEPs, which "inhibits upstream suppliers from securing the license rights necessary to develop products, offer them for sale, or even determine whether to enter the market without the ability to know what a license's cost would be."[225] Is MPEG LA or any other party in a position to refute or address these concerns raised by AAI?

53. Some commenters also assert that, regardless of the state of the market, the Commission does not have authority to impose RAND requirements on ATSC 3.0 patent licenses. For example, ONE Media and MPEG LA contend that the Commission may not have jurisdiction over all SEP holders.[226] Other commenters emphasize the lack of explicit statutory authority for the imposition of RAND requirements, while acknowledging that the Commission has taken action in the past to prevent the abuse of patent rights.[227] We invite comment on the specific arguments raised by commenters regarding jurisdiction.

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[220] PK Comments at 10.

[221] *Id*.

[222] *See, e.g.*, ONE Media Sunsets Comments at iii and 21; MPEG LA Sunsets Comments at 10; InterDigital, Inc. Sunsets Comments at 3; NAB Sunsets Comments at 12; IP Europe Sunsets Reply generally.

[223] Ericsson Sunsets Comments at 4 (supporting a voluntary RAND regime but arguing that "[r]egulatory interventions in the RAND licensing regime risks harming both innovation and standards development to the detriment of U.S. consumers"); Qualcomm Sunsets Comments at 11-12 (contending that interventions in the patent market should be left to "U.S. federal and state court systems and expert federal agencies"); and Scripps Sunsets Reply at 4 (asserting that Commission RAND rules "could have a detrimental rather than beneficial effect").

[224] MPEG LA Sunsets Comments at 4. *But see* One Media Sunsets Comments at 20 (claiming that "not all holders of ATSC 3.0 patents have joined this pool" but not identifying the holdouts or whether the patents they hold are "essential").

[225] AAI *Ex Parte* at 3.

[226] ONE Media Sunsets Comments at 18; MPEG LA Sunsets Comments at 5.

[227] *See, e.g.*, Ericsson Sunsets Comments at 5-8; Qualcomm Sunsets Comments at 11-12. *See also Basic Service Tier Encryption et al*., MB Docket No. 11-169; PP Docket No. 00-67; CSR-8483-Z; CSR-8525-Z; CSR-8334-Z; CSR-8528-Z, Report and Order, 27 FCC Rcd 12786, 12803-04, para. 24 (2012) (declining to impose RAND requirements, but imposing a "good faith" licensing requirement on cable operators).

54. If the Commission were to find problems in the SEP marketplace that—consistent with the Commission's existing authority—could be ameliorated by the application of RAND requirements, how could those requirements be crafted to minimize any potential adverse economic impact while maximizing the opportunity for participation in the ATSC market? PK proposes that the Commission adopt RAND rules in line with the policy established by the Institute of Electrical and Electronics Engineers (IEEE), which PK argues provide sufficient detail to minimize costly disputes.[228] Other commenters emphasize that in 2019 the Department of Justice expressed concern that the IEEE policy had "dampened enthusiasm for the IEEE process" causing delays in standards adoption,"[229] though PK points out that the Fair Standards Alliance praised the IEEE policy as recently as last year.[230] Commenters also note that the Departments of Justice and Commerce recently endorsed a "case-by-case" approach to addressing patent disputes.[231] Were the Commission to adopt regulations, would the IEEE approach, a case by case approach, or another approach be best suited to administration by the Commission? What are the competitive impacts of these different approaches? If the Commission were to establish specific standards, are there sources instead of or in addition to the IEEE policy to which the Commission should look? Regardless of the approach adopted, if any, how could the Commission ensure speedy resolution of complaints? For example, should resolution of such complaints be delegated to a bureau, office, or administrative judge? Should complaints be deemed denied if not acted upon within a certain time frame? To what extent should any Commission rules consider the non-price terms and conditions of licensing agreements?

55. Are there other issues the Commission should consider with respect to the possible application of RAND rules to the licensing of SEPs? We invite comment on the questions above and any others related to the current SEP marketplace and possible Commission rules relating to the RAND licensing of SEPs.

56. *Digital Equity and Inclusion*. The Commission, as part of its continuing effort to advance digital equity for all,[232] including people of color, people with disabilities, people 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[233] 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.

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[228] PK Sunsets Comments at 11 (citing IEEE SA, https://standards.ieee.org/about/policies/bylaws/sect6-7).

[229] Ericsson Sunsets Comments at 5.

[230] PK Sunsets Comments at 11.

[231] *See, e.g.*, Qualcomm Sunsets Comments at 11.

[232] 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.

[233] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

V. PROCEDURAL MATTERS

57. *Regulatory Flexibility Analysis*. The Regulatory Flexibility Act of 1980, as amended (RFA),[234] 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."[235] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule and/or policy changes contained in this Third Report and Order on small entities. The FRFA is set forth in Appendix C. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in the Fourth Further Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix D.

58. *Final PRA Analysis*. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[236] The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),[237] we will seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

59. *Initial PRA Analysis*. This *FNPRM* may result in new or modified information collection requirements. If the Commission adopts any new or modified information collection requirements, the Commission will publish a notice in the Federal Register inviting the public to comment on such requirements, as required by the Paperwork Reduction Act of 1995 (PRA).[238] In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[239] the Commission will seek specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

60. *Congressional Review Act*. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Third Report and Order to Congress and the Government Accountability office, pursuant to 5 U.S.C. § 801(a)(1)(A).

61. *Ex Parte Rules – Permit-But-Disclose*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[240] 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

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[234] *See* 5 U.S.C. § 603.

[235] *See id.* § 605(b).

[236] The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[237] The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). *See* 44 U.S.C. § 3506(c)(4).

[238] The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[239] The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. § 3506(c)(4).

[240] 47 CFR §§ 1.1200 *et seq.*

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.

62. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[241] 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).[242]

- 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.[243]
    - During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.
    - After COVID-19 restrictions are lifted, the Commission has established that hand-carried documents are to be filed at the Commission's office located at 9050 Junction

[241] *Id*. §§ 1.415, 1419.

[242] *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

[243] FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OMD 2020). *See* https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

Drive, Annapolis Junction, MD 20701. This will be the only location where hand-carried paper filings for the Commission will be accepted.[244]

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

64. *Media Bureau Contact Information*. For additional information, contact Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, (202) 418-7142. Direct press inquiries to Janice Wise at (202) 418-8165.

VI. ORDERING CLAUSES

65. **IT IS ORDERED**, pursuant to the authority found in sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535, this Third Report and Order and Fourth Further Notice of Proposed Rulemaking **IS HEREBY ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*.

66. **IT IS FURTHER ORDERED** that the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B and **WILL BECOME EFFECTIVE** 30 days after publication in the Federal Register, except for 47 C.F.R. §§ 73.3801, 73.6029, and 74.782 which contain new or modified information collection requirements that require approval by the OMB under the PRA and which shall become effective after the Commission publishes a notice in the *Federal Register* announcing OMB approval and the effective date of the rules.

67. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. 155(c), the Chief, Media Bureau, is granted delegated authority for the purpose of amending FCC Form 2100 as necessary to implement the licensing process adopted herein.

68. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Third Report and Order and Fourth Further Notice of Proposed Rulemaking, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[244] *See Amendment of the Commission's Rules of Practice and Procedure*, Order, 35 FCC Rcd 5450 (OMD 2020).

APPENDIX A

LIST OF COMMENTERS AND REPLY COMMENTERS

Multicast Licensing FNPRM[1]

1. America's Public Television Stations (APTS) and the Public Broadcasting Service (PBS), collectively "Public Television Stations" or "PTV"
2. Advanced Television Broadcasting Alliance (Broadcasting Alliance)
3. American Television Alliance (ATVA)
4. Spectrum Co. LLC, dba "BitPath"
5. CMG Media Corporation dba Cox Media Group (CMG or Cox)
6. Edge Networks Inc. dba "Evoca"
7. Gray Television, Inc. (Gray)
8. LPTV Broadcasters Association (LPTV Assoc.)
9. National Association of Broadcasters (NAB)
10. NCTA – The Internet & Television Association (NCTA)
11. NTCA – The Rural Broadband Association (NTCA)
12. ONE Media 3.0, LLC (ONE Media)
13. Pearl TV, LLC (Pearl)[2]
14. The E. W. Scripps Company (Scripps)
15. TEGNA Inc. (TEGNA)

Sunsets FNPRM[3]

1. Accessibility Advocacy and Research Organizations
2. Advanced Television Systems Committee (ATSC)
3. Airwavz.tv
4. Alliance for Automotive Innovation (Auto Innovators)
5. America's Public Television Stations (APTS), the Corporation for Public Broadcasting, (CPB), and the Public Broadcasting Service (PBS) (collectively, "PTV")
6. American Television Alliance (ATVA)
7. AWARN Alliance
8. CMG Media Corporation dba Cox Media Group (CMG or Cox)
9. Consumer Technology Association (CTA)
10. E. W. Scripps Company (Scripps)
11. Edge Networks (Evoca)
12. Ericsson
13. Graham Media Group, Inc. (Graham)

[1] Comments dated on or before February 11, 2022; replies dated on or before March 14, 2022.

[2] Pearl TV group consists of eight of the largest broadcast companies in America: CMG, Scripps, Graham Media Group, Hearst Television Inc., Meredith Local Media Group, Nexstar Media Group, Gray, TEGNA, and Sinclair Broadcast Group, Inc.

[3] Comments dated on or before August 8, 2022; replies dated on or before September 6, 2022.

14. Hank Bovis, individual
15. Interdigital
16. IP Europe
17. Jon M. Peha, Professor and Center Director, Carnegie Mellon University
18. LG Electronics Inc. (LG)
19. LPTV Broadcaster Association
20. MPEG LA
21. National Association of Broadcasters (NAB)
22. NCTA- The Internet & Television Association (NCTA)
23. ONE Media 3.0 LLC (ONE Media)
24. Pearl TV
25. Public Knowledge (PK)/ Open Technology Institute (PK/OTI)
26. Qualcomm Inc.
27. Rhode and Schwarz
28. Roger Davis, individual
29. Saankhya Labs Pvt. Ltd. (Saankhya Labs)
30. Spectrum Co LLC d/b/a BitPath (BitPath)
31. VBox Communications (VBox)
32. WNET

APPENDIX B

Final Rule Changes

The Federal Communications Commission proposes to amend 47 CFR parts 73 and 74 as follows:

PART 73 – RADIO BROADCAST SERVICE

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Section 73.682 is amended by revising paragraph (f)(2)(iii) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(f) * * *

(2) * * *

(iii) Paragraph (f)(2)(ii) of this section will sunset on July 17, 2027.

3. Section 73.3801 is amended by revising paragraphs (b)(3), (f)(5) and (6), and by adding paragraph (i) to read as follows:

§ 73.3801 Full Power Television Simulcasting During the ATSC 3.0 (Next Gen TV) Transition

* * * * *

(b) * * *

(3) The "substantially similar" requirement in paragraph (b)(1) of this section will sunset on July 17, 2027~~July 17, 2023~~.

* * * * *

(f) * * *

(5) *Expedited processing*. An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 **primary** signal on the facilities of a host station, ~~the~~ **that** station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

(6) *Required information.*

(i) An application in paragraph (f)(2) of this section must include the following information:

(A) The station **or stations** serving as the host **or hosts, identified by call sign and facility identification number,** if applicable;

(B) The technical facilities of each host station, if applicable;

(C) The DMA of the originating broadcaster's facility and the DMA of each host station, if applicable; ~~and~~

(D) **A web link to the exhibit described in paragraph (i) of this section, if applicable; and**

(E) Any other information deemed necessary by the Commission to process the application.

(ii) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station **or stations**, the broadcaster must, in addition to the information in paragraph (f)(6)(i), also indicate on the application:

(A) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal;

(B) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal that will lose the station's ATSC 1.0 service as a result of the **hosting** ~~simulcasting~~ arrangement **or arrangements**, including identifying areas of service loss by providing a contour overlap map; and

(C) Whether the ATSC 1.0 **primary stream** simulcast signal aired on the host station will serve at least 95 percent of the population in paragraph (f)(6)(ii)(A) of this section.

* * * * *

(i) Multicast Streams. A Next Gen TV station is not required to license, under paragraph (f) of this section, a "guest" multicast programming stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a "multicast" stream refers to a video programming stream other than the primary video programming stream.

(1) *1.0 Multicast Streams*. A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(i) *Host Capacity Limit*. A Next Gen TV station that has converted its own facility to 3.0 must not license more capacity on one or more partner host stations, in the aggregate, than the station could use if it were still operating on its own facility in 1.0. It must demonstrate compliance with this limit in its license application exhibit.

(2) *3.0 Multicast Streams*. A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) *Children's Television*. A Next Gen TV station may rely on a multicast stream it is airing via a host partner to comply with the Commission's children's television programming requirement in Section 73.671 of this Part. Such a stream must either be carried on the same host as the Next Gen TV station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the Next Gen TV station's pre-transition 1.0 signal.

(4) ***Application Exhibit Required.*** **A Next Gen TV station seeking to license hosted multicast streams must prepare and host on its public website (or its Online Public Inspection File if the station does not have a dedicated website) the exhibit referenced in paragraph (f)(6)(i)(D) of this section. The exhibit must contain the following:**

(i) for each hosted stream: channel number (RF and virtual); network affiliation (or type of programming if unaffiliated); resolution (e.g., 1080i, 720p, 480p, or 480i); whether the stream will be simulcast; and if so, the identity of the paired stream in the other service; and

(ii) for a station that has converted its own facility to 3.0, the exhibit must also demonstrate compliance with the host capacity limit. It may do so by either showing that it is seeking hosting only for streams it was broadcasting on its own 1.0 facility prior to its transition to 3.0, or identifying another 1.0 station that is carrying or has carried the same or a similar programming lineup at the same resolutions on the same type of facility (individual or shared);

(iii) for a station that has converted its own facility to 3.0, the exhibit must also demonstrate compliance with the coverage requirement for guest multicast streams, including by providing a contour map showing the guest multicast stream will continue to serve the station's community of license; and

(iv) ***Changes to the exhibit.*** **Changes to the affiliation or content of a stream that would not result in the use of additional capacity, the elimination of a stream, or non-substantive corrections may be made at the discretion of the applicant but must be reflected in a timely update to the existing public exhibit and an emailed notice to the Chief of the Media Bureau's Video Division or their designee. No other changes, including to the location of the exhibit itself, may be made without the filing and approval of a new application.**

4. Section 73.6029 is amended by revising paragraphs (b)(3), (f)(5) and (6), and by adding paragraph (i) to read as follows:

§ 73.6029 Class A Television Simulcasting During the ATSC 3.0 (Next Gen TV) Transition

* * * * *

(b) * * *

(3) The "substantially similar" requirement in paragraph (b)(1) of this section will sunset on July 17, 2027~~July 17, 2023~~.

* * * * *

(f) * * *

(5) *Expedited processing*. An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 **primary** signal on the facilities of a host station, ~~the~~ **that** station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

(6) *Required information.*

(i) An application in paragraph (f)(2) of this section must include the following information:

(A) The station **or stations** serving as the host **or hosts, identified by call sign and facility identification number,** if applicable;

(B) The technical facilities of each host station, if applicable;

(C) The DMA of the originating broadcaster's facility and the DMA of each host station, if applicable; ~~and~~

(D) **A web link to the exhibit described in paragraph (i) of this section, if applicable; and**

(E) Any other information deemed necessary by the Commission to process the application.

(ii) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station **or stations**, the broadcaster must, in addition to the information in paragraph (f)(6)(i), also indicate on the application:

(A) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal;

(B) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal that will lose the station's ATSC 1.0 service as a result of the **hosting** ~~simulcasting~~ arrangement **or arrangements**, including identifying areas of service loss by providing a contour overlap map; and

(C) Whether the ATSC 1.0 **primary stream** simulcast signal aired on the host station will serve at least 95 percent of the population in paragraph (f)(6)(ii)(A) of this section.

(iii) * * *

* * * * *

(i) Multicast Streams. A Next Gen TV station is not required to license, under paragraph (f) of this section, a "guest" multicast programming stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a "multicast" stream refers to a video programming stream other than the primary video programming stream.

(1) *1.0 Multicast Streams*. A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(i) *Host Capacity Limit*. A Next Gen TV station that has converted its own facility to 3.0 must not license more capacity on one or more partner host stations, in the aggregate, than the station could use if it were still operating on its own facility in 1.0. It must demonstrate compliance with this limit in its license application exhibit.

(2) *3.0 Multicast Streams*. A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) *Children's Television*. A Next Gen TV station may rely on a multicast stream it is airing via a host partner to comply with the Commission's children's television programming requirement in Section 73.671 of this Part. Such a stream must either be carried on the same host as the Next Gen TV station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the Next Gen TV station's pre-transition 1.0 signal.

(4) *Application Exhibit Required*. A Next Gen TV station seeking to license hosted multicast streams must prepare and host on its public website (or its Online Public Inspection File if the station does not have a dedicated website) the exhibit referenced in paragraph (f)(6)(i)(D) of this section. The exhibit must contain the following:

> **(i) for each hosted stream: channel number (RF and virtual); network affiliation (or type of programming if unaffiliated); resolution (e.g., 1080i, 720p, 480p, or 480i); whether the stream will be simulcast; and if so, the identity of the paired stream in the other service; and**
>
> **(ii) for a station that has converted its own facility to 3.0, the exhibit must also demonstrate compliance with the host capacity limit. It may do so by either showing that it is seeking hosting only for streams it was broadcasting on its own 1.0 facility prior to its transition to 3.0, or identifying another 1.0 station that is carrying or has carried the same or a similar programming lineup at the same resolutions on the same type of facility (individual or shared);**
>
> **(iii) for a station that has converted its own facility to 3.0, the exhibit must also demonstrate compliance with the coverage requirement for guest multicast streams, including by providing a contour map showing the guest multicast stream will continue to serve the station's community of license; and**
>
> **(iv) *Changes to the exhibit*. Changes to the affiliation or content of a stream that would not result in the use of additional capacity, the elimination of a stream, or non-substantive corrections may be made at the discretion of the applicant but must be reflected in a timely update to the existing public exhibit and an emailed notice to the Chief of the Media Bureau's Video Division or their designee. No other changes, including to the location of the exhibit itself, may be made without the filing and approval of a new application.**

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

5. The authority citation for part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

6. Section 74.782 is amended by revising paragraphs (b)(3), (g)(5) and (6), and by adding paragraph (j) as follows:

§ 74.782 Low Power Television and TV Translator Simulcasting During the ATSC 3.0 (Next Gen TV) Transition

* * * * *

(b) * * *

(3) The "substantially similar" requirement in paragraph (b)(1) of this section will sunset on July 17, 2027~~July 17, 2023~~.

(g) * * *

(5) *Expedited processing*. An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 **primary** signal on the facilities of a host station, ~~the~~ **that** station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

(6) *Required information.*

(i) An application in paragraph (f)(2) of this section must include the following information:

(A) The station **or stations** serving as the host **or hosts, identified by call sign and facility identification number,** if applicable;

(B) The technical facilities of each host station, if applicable;

(C) The DMA of the originating broadcaster's facility and the DMA of each host station, if applicable; ~~and~~

(D) **A web link to the exhibit described in paragraph (i) of this section, if applicable; and**

(E) Any other information deemed necessary by the Commission to process the application.

(ii) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station **or stations**, the broadcaster must, in addition to the information in paragraph (f)(6)(i), also indicate on the application:

(A) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal;

(B) The predicted population within the noise limited service contour served by the station's original ATSC 1.0 signal that will lose the station's ATSC 1.0 service as a result of the **hosting** ~~simulcasting~~ arrangement **or arrangements**, including identifying areas of service loss by providing a contour overlap map; and

(C) Whether the ATSC 1.0 **primary stream** simulcast signal aired on the host station will serve at least 95 percent of the population in paragraph (f)(6)(ii)(A) of this section.

* * * * *

(j) Multicast Streams. A Next Gen TV station is not required to license, under paragraph (f) of this section, a "guest" multicast programming stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this

section, a "multicast" stream refers to a video programming stream other than the primary video programming stream.

(1) *1.0 Multicast Streams*. A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

> **(i) *Host Capacity Limit.* A Next Gen TV station that has converted its own facility to 3.0 must not license more capacity on one or more partner host stations, in the aggregate, than the station could use if it were still operating on its own facility in 1.0. It must demonstrate compliance with this limit in its license application exhibit.**

(2) *3.0 Multicast Streams*. A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) *Children's Television*. A Next Gen TV station may rely on a multicast stream it is airing via a host partner to comply with the Commission's children's television programming requirement in Section 73.671 of this Part. Such a stream must either be carried on the same host as the Next Gen TV station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the Next Gen TV station's pre-transition 1.0 signal.

(4) *Application Exhibit Required.* A Next Gen TV station seeking to license hosted multicast streams must prepare and host on its public website (or its Online Public Inspection File if the station does not have a dedicated website) the exhibit referenced in paragraph (f)(6)(i)(D) of this section. The exhibit must contain the following:

> **(i) for each hosted stream: channel number (RF and virtual); network affiliation (or type of programming if unaffiliated); resolution (e.g., 1080i, 720p, 480p, or 480i); whether the stream will be simulcast; and if so, the identity of the paired stream in the other service; and**
>
> **(ii) for a station that has converted its own facility to 3.0, the exhibit must also demonstrate compliance with the host capacity limit. It may do so by either showing that it is seeking hosting only for streams it was broadcasting on its own 1.0 facility prior to its transition to 3.0, or identifying another 1.0 station that is carrying or has carried the same or a similar programming lineup at the same resolutions on the same type of facility (individual or shared);**
>
> **(iii) for a station that has converted its own facility to 3.0, the exhibit must also demonstrate compliance with the coverage requirement for guest multicast streams, including by providing a contour map showing the guest multicast stream will continue to serve the station's community of license; and**
>
> **(iv) *Changes to the exhibit.* Changes to the affiliation or content of a stream that would not result in the use of additional capacity, the elimination of a stream, or non-substantive corrections may be made at the discretion of the applicant but must be reflected in a timely update to the existing public exhibit and an emailed notice to the Chief of the Media Bureau's Video Division or their designee. No other changes, including to the location of the exhibit itself, may be made without the filing and approval of a new application.**

APPENDIX C

Final Regulatory Flexibility Analysis (FRFA) for the *Third Report and Order*

1. As required by the Regulatory Flexibility Act of 1980 (RFA),[1] as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice of Proposed Rulemaking (FNPRM) and Third FNPRM in this proceeding.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the FNPRMs, including comment on the IRFAs. The Commission received no comments in response to either IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Third Report and Order

2. In the first *Next Gen TV Report and Order,* the Commission authorized television broadcasters to use the Next Gen TV transmission standard, also called "ATSC 3.0" or "3.0," on a voluntary, market-driven basis. ATSC 3.0 is the new TV transmission standard developed by the Advanced Television Systems Committee as the world's first Internet Protocol (IP)-based broadcast transmission platform. The Commission determined in the *Next Gen TV Report and Order* that broadcasters that deploy ATSC 3.0 generally must continue to deliver current-generation digital television (DTV) service, using the ATSC 1.0 transmission standard, also called "ATSC 1.0" or "1.0," to their viewers through local simulcasting. Specifically, the Commission required full power and Class A TV stations deploying ATSC 3.0 service to simulcast the primary video programming stream of their ATSC 3.0 channel in an ATSC 1.0 format.

3. The Commission determined in the *Next Gen TV Report and Order* that the local simulcasting requirement is crucial to the deployment of Next Gen TV service in order to minimize viewer disruption. The Next Gen TV standard is not backward-compatible with existing TV sets or receivers, which have only ATSC 1.0 and analog tuners. This means that consumers will not be able to view ATSC 3.0 transmissions on their existing televisions without additional equipment. Thus, it is critical that Next Gen TV broadcasters continue to provide service using the current ATSC 1.0 standard while the marketplace adopts devices compatible with the new 3.0 transmission standard in order to avoid either forcing viewers to acquire new equipment or depriving them of television service. A TV station cannot, as a technical matter, broadcast in both 1.0 and 3.0 format from the same facility. Therefore, local simulcasting will be effectuated through voluntary partnerships that broadcasters that wish to provide Next Gen TV service must enter into with other broadcasters in their local markets. Next Gen TV broadcasters must partner with another television station (i.e., a temporary "host" station) in their local market to either: (1) air an ATSC 3.0 channel at the temporary host's facility, while using their original facility to continue to provide an ATSC 1.0 simulcast channel, or (2) air an ATSC 1.0 simulcast channel at the temporary host's facility, while converting their original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.

4. In this *Third Report and Order*, we adopt changes to our ATSC 3.0 (3.0 or Next Gen TV) rules considered in both the Second FNPRM (or *Multicast Licensing FNPRM*) and Third FNPRM (or *Sunsets FNPRM*). In the first part of this Order, the Commission generally adopts the rules proposed in the *Next Gen TV Multicast Licensing FNPRM*, establishing a licensing regime for Next Gen TV stations' multicast streams that are aired on host stations during the transition period. These rules facilitate and

[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] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Second Further Notice of Proposed Rulemaking, 36 FCC Rcd at 16113, Appendix B (2021) (*Next Gen TV Multicast Licensing FNPRM)*; Third Further Notice of Proposed Rulemaking, FCC 22-47, 2022 WL 2290237, Appendix A (rel. Jun. 22, 2022) (*Next Gen TV Sunsets FNPRM*).

[3] *See* 5 U.S.C. § 604.

encourage Next Gen TV stations to preserve consumer access to multicast programming in 1.0 format during the voluntary ATSC 3.0 transition. They will provide the industry with regulatory certainty about the legal treatment of licensed multicast streams; clarify that the originating station (and not the host station) is responsible for regulatory compliance regarding a multicast stream being aired on a host station; give the Commission clear enforcement authority over the originating station in the event of a rule violation on the hosted multicast programming stream; and facilitate NCE stations' 3.0 deployment by allowing them to serve as hosts to commercial stations' multicast streams. The Commission recognizes that allowing Next Gen TV stations to seek modification of their license to include capacity on multiple host stations represents a significant departure from its present licensing regime. The Commission finds that doing so is appropriate because it is limited to the temporary broadcast transition to 3.0 and to specific situations for which there is a clear need.

5. In the second part of this Order, the Commission retains the substantially similar rule and requirement to comply with the ATSC A/322 standard until July 17, 2027. The substantially similar rule requires that the programming aired on a Next Gen TV station's ATSC 1.0 simulcast channel be "substantially similar" to that of the primary video programming stream on the ATSC 3.0 channel.[4] This means that the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0 and promotions for upcoming programs.[5] In this Order, the Commission finds that this rule remains necessary to protect consumers by ensuring that over-the-air (OTA) viewers who rely on 1.0 are able to continue watching the same programming they watch today, as well as any new programming offerings on a broadcaster's primary channel that can be reasonably provided in 1.0 format. The Commission finds that there has not yet been a sufficient shift in the marketplace that would justify elimination or modification of the substantially similar rule. The requirement to comply with the ATSC A/322 standard, which applies only to Next Gen TV broadcasters' primary video programming stream, provides certainty to consumers, television receiver manufacturers, and MVPDs that 3.0 TV sets or other 3.0 TV equipment will be able to receive all 3.0 primary broadcast signals. In this Order, the Commission finds that this rule remains necessary at this time to protect consumers and other stakeholders.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA of either the Second or Third FNPRM.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[6]

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[4] 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1); *First Next Gen TV Report and Order*, 32 FCC Rcd at 9942-43, para. 22. The substantially similar rule is independent of the requirement for Next Gen TV broadcasters to simulcast in 1.0 format, a requirement that does not have a sunset date. *See* 47 CFR §§ 73.3801(b), 73.6029(b), 74.782(b).

[5] Such enhanced content or features that cannot reasonably be provided in ATSC 1.0 format include: targeted advertisements, "hyper-localized" content (e.g., geo-targeted weather, targeted emergency alerts, and hyper-local news), programming features or improvements created for the 3.0 service (e.g., emergency alert "wake up" ability and interactive programming features), enhanced formats made possible by 3.0 technology (e.g., 4K or HDR), and any personalization of programming performed by the viewer and at the viewer's discretion. *See* 47 CFR §§ 73.3801(b)(1), 73.6029(b)(1), 74.782(b)(1).

[6] 5 U.S.C. § 604(a)(3).

8. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[7] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[8] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[9] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[10] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

10. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[11] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[12] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[13] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[14] Of that number, 657 firms had revenue of less than $25,000,000.[15] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

11. As of December 31, 2022, there were 1,375 licensed commercial television stations.[16] Of this total, 1,282 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to

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[7] 5 U.S.C. § 603(b)(3).

[8] *Id.* § 601(6).

[9] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[10] 15 U.S.C. § 632.

[11] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[12] *Id.*

[13] *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[14] *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.

[15] *Id.* The 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.

[16] *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022), https://www.fcc.gov/document/broadcast-station-totals-december-31-2022.

Commission staff review of the BIAKelsey Media Access Pro Online Television Database (MAPro) on January 13, 2023,[17] and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2022, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,912 LPTV stations and 3,122 TV translator stations.[18] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

12. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[19] 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.[20] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[21] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[22]

13. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[23] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[24] Of this number, 2,964 firms operated with fewer than 250 employees.[25] 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

[17] BIA Advisory Services, BIAKelsey Media Access Pro Online Television Database, http://www.biakelsey.com/data-platforms/media-access-pro (last visited on Jan. 13, 2023).

[18] *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022), https://www.fcc.gov/document/broadcast-station-totals-december-31-2022.

[19] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[20] *Id.*

[21] *Id.*

[22] 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.

[23] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[24] *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.

[25] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

in the provision of fixed local services.[26] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[27] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[28] Based on industry data, there are about 420 cable companies in the U.S.[29] Of these, only seven have more than 400,000 subscribers.[30] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[31] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[32] Of these, about 639 have more than 15,000 subscribers.[33] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

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."[34] 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.[35] Based on industry data, only six cable system operators have more than 677,000 subscribers.[36] 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

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[26] 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.

[27] *Id.*

[28] 47 CFR § 76.901(d).

[29] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[30] 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).

[31] 47 CFR § 76.901(c).

[32] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[33] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[34] 47 U.S.C. § 543(m)(2).

[35] *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).

[36] 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.[37] 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. *Direct Broadcast Satellite ("DBS") Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[38] Transmission facilities may be based on a single technology or combination of technologies.[39] 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.[40] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[41]

17. 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 3,054 firms operated in this industry for the entire year.[43] Of this number, 2,964 firms operated with fewer than 250 employees.[44] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[45] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

18. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and

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[37] 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).

[38] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[39] *Id.*

[40] *See id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[41] *Id*.

[42] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[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] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5*,* 32 FCC Rcd 568, 595 (Jan. 17, 2017).

distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.[46] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[47] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[48] Of this total, 2,964 firms operated with fewer than 250 employees.[49] Thus under the SBA size standard, the majority of firms in this industry can be considered small.

19. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.[50] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[51] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.[52] Of this total, 2,964 firms operated with fewer than 250 employees.[53] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

20. *Open Video Systems*. The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is "Wired Telecommunications Carriers."[54] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[55] U.S. Census Bureau data for 2017 show that there were

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[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[47] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[48] *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.

[49] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[50] *See* 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] *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.

[53] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[54] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[55] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

3,054 firms in this industry that operated for the entire year.[56] Of this total, 2,964 firms operated with fewer than 250 employees.[57] Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

21. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"[58] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[59] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[60]

22. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[61] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[62] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[63] Of this number, 2,837 firms employed

[56] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[57] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[58] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

[59] *See* 47 CFR § 27.4; *see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[60] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[61] *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.

[62] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[63] *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.

fewer than 250 employees.[64] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[65] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[66] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[67] One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[68]

24. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[69] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

25. *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.

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[64] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[65] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[66] *See* 47 CFR § 27.1218(a).

[67] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.

[68] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[69] *See* 47 CFR § 27.1219(a).

Wired Telecommunications Carriers[70] is the closest industry with an SBA small business size standard.[71] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[72] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[73] Of this number, 2,964 firms operated with fewer than 250 employees.[74] 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.[75] Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.[76] 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.

26. *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.[77] Wired Telecommunications Carriers[78] 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.[79] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[80] Of this number, 2,964 firms operated with fewer than 250 employees.[81] 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

[70] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[71] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[72] *Id.*

[73] *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.

[74] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[75] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[76] *Id.*

[77] 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.

[78] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[79] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[80] *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.

[81] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

exchange service providers.[82] Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.[83] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

27. *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.[84] 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.[85] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[86] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[87] Of this number, 624 firms had fewer than 250 employees.[88] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

28. *Audio and Video Equipment Manufacturing.* This industry comprises establishments primarily engaged in electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.[89] The SBA small business size standard for this industry classifies firms with 750 employees or less as small.[90] According to 2017 U.S. Census Bureau data, 464 firms in this industry operated that year.[91] Of this number, 399 firms operated with less than 250 employees.[92] Based on this data and the associated SBA size standard, we conclude that the majority of firms in this industry are small.

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[82] 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.

[83] *Id.*

[84] *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.

[85] *Id*.

[86] *See* 13 CFR § 121.201, NAICS Code 334220.

[87] *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

[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.

[89] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"334310 Audio and Video Equipment Manufacturing,"* https://www.census.gov/naics/?input=334310&year=2017&details=334310.

[90] *See* 13 CFR 121.201, NAICS Code 334310.

[91] *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 334310, https://data.census.gov/cedsci/table?y=2017&n=334310&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[92] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that the U.S. Census Bureau withheld publication of the number of firms that operated for the entire year and the number of firms that operated with 5 to 9 employees, to avoid disclosing data for individual companies (see Cell Notes for "Firms operated for the entire year" and "Firms operated for the

(continued….)

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The Order modifies our Next Gen TV licensing processes to include additional reporting, recordkeeping, and other compliance for small entities that seek to include hosted multicast streams within their license. While the Commission is not in a position to determine whether small entities will have to hire professionals to comply with our decisions and cannot quantify the cost of compliance for small entities, as discussed in the Order, the approaches we have taken to implement the requirements for Next Gen TV multicasting have minimal cost implications for impacted entities.

30. As discussed in section A of this FRFA, this Order establishes a licensing regime for Next Gen TV stations' *multicast* streams that are aired on host stations (as guest streams) during the transition period. The Order applies the licensing process for primary simulcast streams to guest multicast streams. Thus, Next Gen TV broadcasters that choose to deploy ATSC 3.0 service and seek to license guest multicast streams aired on a host station are subject to certain reporting, recordkeeping, or other compliance requirements.

31. A Next Gen TV broadcaster seeking to license one or more guest multicast streams aired on a host station (multicast license applicant) is subject to the host capacity limit (discussed in section III.D. of this Order). That is, a Next Gen TV station may not use more 1.0 host capacity than it could have used if it were still broadcasting in 1.0 on its own facilities. A multicast license applicant is also subject to most requirements applicable to primary streams, including rules concerning signal coverage, simulcast agreements, MVPD notice and on-air consumer notice requirements for each guest multicast stream (discussed in section III.H. of this Order).[93]

32. All multicast license applicants, including small entities, must file an application (Form 2100) to modify its license with the Commission and receive prior Commission approval. This requires the applicant must prepare an exhibit identifying each guest stream and provide the following information about each stream, as broadcast: the host station; channel number (RF and virtual); network affiliation (or type of programming if unaffiliated); resolution (e.g., 1080i, 720p, 480p, or 480i); the predicted percentage of population within the noise limited service contour served by the station's original ATSC 1.0 signal that will be served by the host, with a contour overlay map identifying areas of service loss and, in the case of 1.0 streams, coverage of the originating station's community of license; and whether the stream will be simulcast, and if so, the "paired" stream in the other service. Finally, the exhibit must either state that the applicant will be airing the same programming that it is airing in 1.0 at the time of the application or identify the station that has aired or is airing the same or a similar programming lineup at the same resolutions on the same type of facility (individual or shared), as well as that station's lineup (with resolutions). This exhibit must be placed on the applicant's public website, with a link provided in the application.

(Continued from previous page)
entire year with 5 to 9 employees"). Therefore, the number of firms with employees that meet the SBA size standard would be higher that noted herein.

[93] *See* 47 CFR §§ 73.3801(a) and (e), 73.6029(a) and (e), 74.782(a) and (f) (simulcast arrangements and agreements); 47 CFR §§ 73.3801(d) and (f)(5)-(6), 73.6029(d) and (f)(5)-(6), 74.782(e) and (g)(5)-(6) (DMA and community of license coverage requirements); 47 CFR §§ 73.3801(h), 73.6029(h), 74.782(i) (MVPD notice requirements); 47 CFR §§ 73.3801(g), 73.6029(g), 74.782(h) (on-air viewer notices); and 47 CFR §§ 73.3801(f)(2), 73.6029(f)(2), 74.782(g)(2) (licensing procedures). Regarding coverage, a Next Gen TV station's 1.0 guest multicast streams aired on a host must continue to cover its (the guest station's) entire community of license and the host and guest stations must be assigned to the same DMA. For 3.0 multicast streams aired on a host channel, only the DMA requirement applies. When determining whether a station seeking to transition is eligible for expedited processing, the Commission will consider only whether the primary stream will remain available in 1.0 to at least 95% of a station's current OTA audience. A multicast license applicant generally must enter into a written simulcast agreement and provide such agreement to the Commission upon request.

33. The Order also retains for another four years two existing compliance requirements for all stations, including small entities, and eliminates the sunset dates for these requirements. The Order retains the "substantially similar" rule (see section III.I. of this Order). This rule requires that the programming aired on a Next Gen TV station's ATSC 1.0 simulcast channel be "substantially similar" to that of the primary video programming stream on the ATSC 3.0 channel. This means that the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0, including targeted advertisements, and promotions for upcoming programs. This rule will now expire in 2027absent Commission action. The Order retains the requirement to comply with the ATSC A/322 standard ("Physical Layer Protocol") (A/322) (see section III.J of this Order), which is the standard that defines the waveforms that ATSC 3.0 signals may take. The requirement to comply with A/322 will now expire in 2027 absent Commission action.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[94]

35. The Commission has authorized television broadcasters to use the Next Gen TV (ATSC 3.0) standard on a voluntary, market-driven basis. As observed in the Final Regulatory Flexibility Analysis of the 2017 *First Next Gen TV Report and Order*,[95] this means that broadcasters decide whether (and if so when) to deploy ATSC 3.0 service and bear the costs associated with such deployment. All broadcasters, including small entities, will need to undertake any costs or burdens associated with ATSC 3.0 service should they choose to do so.

36. The rules concerning multicast licensing provide increased flexibility to broadcasters without imposing additional obligations. By expanding the ability of broadcasters to place licensed streams on additional host partners, the rules may allow small broadcast entities transitioning to ATSC 3.0 to experience positive economic impacts through partnerships with unaffiliated third parties. NCE television stations in particular, both large and small, will experience positive benefits from the rules, which could improve their ability to participate in the transition to Next Gen TV. Although we intended to limit certain simulcast multicast stream relief only to NCE stations or commercial stations airing multicast streams on NCE partner hosts,[96] we will instead allow any Next Gen TV station to apply for this relief under the non-expedited process, but emphasize that all applicants, including small entities, must demonstrate why this relief is in the public interest and outweighs any potential harms. In addition, the multicast licensing approach minimizes administrative burdens for all broadcasters, including small broadcasters. The rules streamline the current process whereby broadcasters request special temporary authority on a case-by-case basis. We also considered concerns regarding the potential abuse of these rules in that the multicast streams may allow stations to evade local ownership rules. Consistent with our previous decisions, hosting multicast streams on a temporary host station's facility will not result in any

[94] 5 U.S.C. § 603(c)(1)-(c)(4).

[95] *First Next Gen TV Report and Order*, 32 FCC Rcd at 10026-27, para. 32.

[96] *Next Gen TV Multicast Licensing FNPRM*, 2021 WL 5182914 at *7, para. 19, n.74 ("For the purposes of this tentative conclusion, we consider similarly situated originating stations to be NCEs, or commercial stations working with NCE partner hosts, transitioning their own channel to 3.0, who are unable to find a partner 1.0 host that could, on its own, provide coverage of its primary stream to 95 percent of the applicant's 1.0 service area."). In proposing this approach, we supported the Bureau's prior decision, which found that "permitting NCE stations to participate in the ATSC 3.0 rollout arrangements in this manner is critical to the success of the transition." *WNUV STA*, at page 6.

additional requirements for small entities related to television stations attribution (e.g., filing ownership reports).[97] In finding that it is appropriate to limit a Next Gen TV station's 1.0 host capacity to that which it could deploy on its own 1.0 channel, we determined that other alternatives related to proposed capacity limits would be overly restrictive to all stations, including small entities, and that the best metric will be the number and resolution of streams actually airing (or that previously actually aired) on specific 1.0 facilities. In retaining the rules that require stations, including small entities, to broadcast substantially similar programing to their primary streams, we rejected the alternatives presented by broadcasters that argued that market incentives would ensure OTA viewers have access to this programming.

G. Report to Congress

37. The Commission will send a copy of the Third Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[98] In addition, the Commission will send a copy of the Third Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the Federal Register.[99]

[97] *Next Gen TV First Report and Order*, 32 FCC Rcd at 9972, n.237. *See also Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916, 5924, para. 15 (2020).

[98] *See* 5 U.S.C. § 801(a)(1)(A).

[99] *See id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in this *Fourth Further Notice of Proposed Rulemaking* (*FNPRM or Fourth FNPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided on the first page of the *FNPRM*. The Commission will send a copy of this entire *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *FNPRM* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In this *Fourth Further Notice of Proposed Rulemaking* (*FNPRM*), the Commission seeks to further its understanding of the current marketplace for ATSC 3.0 Standard Essential Patents (SEPs) and the ability of third parties to develop products that rely upon them. As the Commission has previously observed in this proceeding, the Advanced Television Systems Committee (ATSC), which developed the ATSC 3.0 standard, requires patent owners to disclose that they hold essential patents and to commit to licensing them on reasonable and non-discriminatory (RAND) terms. The record developed in response to the *Sunsets FNPRM*, however, raises questions both about whether patentees are respecting these commitments and about the challenges faced in court by third parties seeking their enforcement. In light of these concerns and the limits of the existing record, the Commission seeks additional comments about the general state of the market, particularly from parties that do not hold SEPs but have licensed or attempted to license them. This will inform the Commission's consideration of the need for, appropriateness of, and potential benefits of Commission rules governing the RAND licensing of SEPs.

B. Legal Basis.

3. The proposed action is authorized pursuant to sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535.

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 rules adopted herein.[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

[1] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] 5 U.S.C. § 603(b)(3).

[5] *Id.* § 601(6).

[6] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes (continued….)

which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[8] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[9] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[10] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[11] Of that number, 657 firms had revenue of less than $25,000,000.[12] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

6. As of December 31, 2022, there were 1,375 licensed commercial television stations.[13] Of this total, 1,282 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIAKelsey Media Access Pro Online Television Database (MAPro) on January 13, 2023,[14] and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2022, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,912 LPTV stations and 3,122 TV translator stations.[15] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

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one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[7] 15 U.S.C. § 632.

[8] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[9] *Id.*

[10] *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[11] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[12] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[13] *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022), https://www.fcc.gov/document/broadcast-station-totals-december-31-2022.

[14] BIA Advisory Services, BIAKelsey Media Access Pro Online Television Database, http://www.biakelsey.com/data-platforms/media-access-pro (last visited on Jan. 13, 2023).

[15] *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022), https://www.fcc.gov/document/broadcast-station-totals-december-31-2022.

7. *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.[16] 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.[17] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[18] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[19]

8. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[20] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[21] Of this number, 2,964 firms operated with fewer than 250 employees.[22] 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.[23] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[24] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[25] Based on industry data, there are about 420 cable companies in the U.S.[26] Of these, only seven have more than 400,000 subscribers.[27] In addition, under the Commission's rules, a "small system" is a cable system serving

[16] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[17] *Id.*

[18] *Id.*

[19] 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.

[20] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[21] *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.

[22] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[23] 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.

[24] *Id.*

[25] 47 CFR § 76.901(d).

[26] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[27] 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).

15,000 or fewer subscribers.[28] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[29] Of these, about 639 have more than 15,000 subscribers.[30] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

10. *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."[31] 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.[32] Based on industry data, only six cable system operators have more than 677,000 subscribers.[33] 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.[34] 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.

11. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[35] Transmission facilities may be based on a single technology or combination of technologies.[36] Establishments in this industry use the wired

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[28] 47 CFR § 76.901(c).

[29] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[30] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[31] 47 U.S.C. § 543(m)(2).

[32] *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).

[33] 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).

[34] 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).

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[36] *Id.*

telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services.[37] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[38]

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[39] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[40] Of this number, 2,964 firms operated with fewer than 250 employees.[41] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[42] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

13. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.[43] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[44] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[45]

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[37] *See id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[38] *Id*.

[39] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[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 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&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 Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5*,* 32 FCC Rcd 568, 595 (Jan. 17, 2017).

[43] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[44] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[45] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

Of this total, 2,964 firms operated with fewer than 250 employees.[46] Thus under the SBA size standard, the majority of firms in this industry can be considered small.

14. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.[47] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[48] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.[49] Of this total, 2,964 firms operated with fewer than 250 employees.[50] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

15. *Open Video Systems*. The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is "Wired Telecommunications Carriers."[51] The SBA small business size standard for this industry 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 total, 2,964 firms operated with fewer than 250 employees.[54] Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

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[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, "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] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[50] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[51] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[52] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[53] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: 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.

16. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"[55] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[56] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[57]

17. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[58] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[59] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[60] Of this number, 2,837 firms employed fewer than 250 employees.[61] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

18. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[62] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has

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[55] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

[56] *See* 47 CFR § 27.4; *see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[57] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[58] *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.

[59] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[60] *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.

[61] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[62] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[63] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[64] One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[65]

19. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[66] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

20. *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[67] is the closest industry with an SBA small business size standard.[68] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[69] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[70] Of this number, 2,964 firms operated with fewer than 250 employees.[71] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local

[63] *See* 47 CFR § 27.1218(a).

[64] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.

[65] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[66] *See* 47 CFR § 27.1219(a).

[67] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[68] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[69] *Id.*

[70] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[71] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

exchange service providers.[72] Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.[73] 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.

21. *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.[74] Wired Telecommunications Carriers[75] 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.[76] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry 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 3,956 providers that reported they were competitive local exchange service providers.[79] Of these providers, the Commission estimates that 3,808 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.

22. *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.[81] 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.[82] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[83] U.S. Census Bureau data for 2017 show that there were 656

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[72] 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.

[73] *Id.*

[74] 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.

[75] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[76] *See* 13 CFR § 121.201, NAICS Code 517311(as of 10/1/22, NAICS Code 517111).

[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, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[82] *Id.*

[83] *See* 13 CFR § 121.201, NAICS Code 334220.

firms in this industry that operated for the entire year.[84] Of this number, 624 firms had fewer than 250 employees.[85] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

23. *Audio and Video Equipment Manufacturing.* This industry comprises establishments primarily engaged in electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.[86] The SBA small business size standard for this industry classifies firms with 750 employees or less as small.[87] According to 2017 U.S. Census Bureau data, 464 firms in this industry operated that year.[88] Of this number, 399 firms operated with less than 250 employees.[89] Based on this data and the associated SBA size standard, we conclude that the majority of firms in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

24. The Fourth FNPRM considers whether to adopt rules governing the RAND licensing of SEPs. The Fourth FNPRM does not propose any new reporting or recordkeeping requirements. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *Fourth FNPRM* will require small entities to hire professionals to comply. We expect the information we receive in comments including where requested, cost information, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *Fourth FNPRM*.

E. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered.

25. 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

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[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 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

[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] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"334310 Audio and Video Equipment Manufacturing,"* https://www.census.gov/naics/?input=334310&year=2017&details=334310.

[87] *See* 13 CFR 121.201, NAICS Code 334310.

[88] *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 334310, https://data.census.gov/cedsci/table?y=2017&n=334310&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[89] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that the U.S. Census Bureau withheld publication of the number of firms that operated for the entire year and the number of firms that operated with 5 to 9 employees, to avoid disclosing data for individual companies (see Cell Notes for "Firms operated for the entire year" and "Firms operated for the entire year with 5 to 9 employees"). Therefore, the number of firms with employees that meet the SBA size standard would be higher that noted herein.

the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities."[90]

26. The Commission has authorized television broadcasters, including small entities, to use the Next Gen TV (ATSC 3.0) standard on a voluntary, market-driven basis, allowing them to decide whether (and if so when) to deploy ATSC 3.0 service and bear the costs associated with such deployment. All stakeholders, including small entities, will need to undertake any costs or burdens associated with ATSC 3.0 service should they choose to do so. The Advanced Television Systems Committee (ATSC), which developed the ATSC 3.0 standard, requires patent owners to disclose that they hold essential patents and to commit to licensing them on RAND terms. In furthering our understanding of the current marketplace for ATSC 3.0 SEPs, we consider whether patentees, including small entities, are respecting these commitments and the challenges faced in court by the third parties seeking their enforcement. Among the alternatives we seek to consider is the degree to which the Commission should simply monitor the market or actively respond to license abuse and formalize RAND requirements for those who hold SEPs, including small entities. Where there are problems in the SEP marketplace that could be improved, we consider if the Commission were to adopt rules requiring RAND licensing of SEPs, where such rules would facilitate licensing by equipment manufacturers. We further consider how to minimize any adverse economic impact on the market, including small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

27. None.

[90] 5 U.S.C. §§ 603(c)(1)-(4).

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

In the Matter of	)	
	)	
Enhanced Communications Group, LLC	)	File No.: EB-IHD-22-00033161
	)	NAL/Acct. No.: 202332080032
	)	FRN: 0005076914

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 13, 2023 **Released: July 14, 2023**

By the Commission:

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I. INTRODUCTION

1. We propose in this Notice of Apparent Liability for Forfeiture (NAL) a forfeiture penalty of $1,000,000 against Enhanced Communications Group, LLC (Enhanced or Company) for its failure to cooperate with Telecommunications Reporting Worksheets (Worksheets) documentation requirements, as well as its failure to file accurate Worksheets in apparent violation of sections 251(e)(2) and 254(d) of the Communications Act of 1934, as amended (Act), and sections 1.1154, 52.17, 52.32, 54.706, 54.711, and 64.604 of the Commission's rules,[1] and Commission orders issued pursuant to section 254(d) of the Act.[2]

2. The Federal Communications Commission (FCC or Commission) has directed the Universal Service Administrative Company (USAC) to administer the collection and disbursement of the Universal Service Fund (USF). USAC relies on the accuracy of information in Worksheets, filed by telecommunications service providers and certain telecommunications providers (collectively, service providers), to determine the service providers' USF contribution obligations. The Commission also relies on accurate Worksheets to ensure service providers are fully assessed for the Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), North American Numbering Plan (NANP), and federal regulatory fee contribution requirements. To ensure that the information submitted in Worksheets is complete and accurate, the Commission's rules: (a) grant USAC the authority to audit service providers that file Worksheets and to verify information submitted in Worksheets; (b) require service providers to maintain documentation supporting the data reported in Worksheets; and (c) require service providers to submit the supporting documentation to USAC and the Commission upon demand.

3. The failure to maintain and submit the required documentation requested by USAC to verify and audit the accuracy of information reported in Worksheets undermines the Commission's efforts to maintain the USF, TRS Fund, LNP, NANP, and federal regulatory fee payment requirements that the FCC has implemented under the Act. In this case, Enhanced failed to cooperate with a USAC audit, and failed repeatedly to respond to directives from USAC to provide documentation supporting information reported in the Company's Annual Worksheets for 2017 through 2022. Moreover, the Company repeatedly filed inaccurate Annual Worksheets for 2017 through 2022. We therefore find them apparently liable for a forfeiture penalty of $1,000,000.

II. BACKGROUND

A. Legal Background

1. FCC Requirements to File Accurate Worksheets When Due

4. The Act codifies Congress's long-standing 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."[3] In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user telecommunications revenues.[4] The Commission also requires certain providers of interstate telecommunications to contribute to the USF.[5]

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[1] 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 52.17, 52.32, 54.706, 54.711, 64.604.

[2] *See, e.g.*, *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 36 FCC Rcd 14176 (WCB 2021) (*2022 Annual Worksheet Instructions*).

[3] 47 U.S.C. § 254(d).

[4] 47 CFR § 54.706(b).

5. The Commission has established specific procedures to administer the USF. Each service provider, with certain exceptions, is required to contribute to the USF, file annually an FCC Form 499-A, also known as the Annual Worksheet,[6] and file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.[7] 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.[8] 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.[9] Each service provider's Annual Worksheet for 2016 through 2021 revenues were respectively due by April 1 of 2017 through 2022.[10] The Commission's rules require that service providers report accurate information in the Annual Worksheets.[11] The Commission's rules also explicitly warn service providers that the failure to

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[5] *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."). Enhanced is a reseller of interstate and international telecommunications service. *See* boom! Mobile, Enhanced Communications Group (ECG) (Apr. 7, 2015), https://boom.us/pages/enhanced-communications-group-ecg (Enhanced is a "provider of telecommunications services [including] mobile communications services for voice and internet, ... traditional local & long distance phone service, voice over internet systems, wireless voice and internet products and services . . . ."); Universal Service Administrative Company, *https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=821178* (stating in Annual Worksheets that Enhanced provides "Toll Reseller" and "Cellular/PCS/SMR (wireless telephony inc. by resale)" services) (last visited June 23, 2023); *International Authorizations Granted*, Public Notice, 14 FCC Rcd 9992 (IB June 22, 1999) (granting authority to provide international telecommunications service as a facilities-based or resale service provider).

[6] *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 the Commission Registration System (CORES) and obtaining a FCC Form 499 Filer ID Number (FCC Filer ID Number) from USAC's E-File system. *E.g.*, *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199.

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

[8] *E.g.*, *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14236.

[9] *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.

[10] *See 2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14200; *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 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1373 (*2020 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2019 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 34 FCC Rcd 426, 448, (*2019 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2018 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 33 FCC Rcd 1801, 1823 (WCB 2018) (*2018 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2017 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 32 FCC Rcd 1238, 1261 (WCB 2017) (*2017 Annual Worksheet Instructions*). Quarterly Worksheet filings are due on February 1, May 1, August 1, and November 1 of each year. *See, e.g.*, *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14200.

[11] 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.*, 2022 FCC Form 499-A, Line 606. While the Commission requires revisions to Worksheets when errors are discovered, *see 2022 Annual Worksheet Instructions*, (continued….)

file timely and accurate Worksheets or submit timely USF payments potentially subjects them to enforcement action.[12]

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."[13] To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.[14] The Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.[15] 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.[16] Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, certain service providers[17] must contribute to the TRS Fund based on their interstate end-user revenues.[18] Under the Commission's rules, the TRS Fund administrator, Rolka Loube Associates, LLC (Rolka Loube), uses Annual Worksheet filings to determine each service provider's annual or monthly TRS Fund contribution amounts.[19]

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.[20] 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."[21] In carrying out these statutory

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supra note 2, 36 FCC Rcd at 14200-14201, the requirement does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information and belief. *See* 2022 FCC Form 499-A, Line 606.

[12] 47 CFR § 54.713.

[13] 47 U.S.C. § 225(b)(1).

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

[15] *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).

[16] *Id.*

[17] 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).

[18] *Id*. Under the Commission's rules, service providers must contribute at least $25 per year, and service providers whose annual contributions are less than $1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, service providers are permitted to divide their contributions into 12 equal monthly payments. *See id*. § 64.604(c)(5)(iii)(B).

[19] *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).

[20] 47 U.S.C. § 251(e)(1).

[21] *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),
(continued….)

directives, the Commission adopted sections 52.17 and 52.32 of the Commission's rules,[22] which require service providers[23] to contribute to the costs of numbering administration and LNP on the basis of their end-user telecommunications revenues.[24] The NANP administrator's billing and collection agent, Welch LLP (Welch),[25] and the LNP administrator, iconectiv, LLC (iconectiv),[26] use Annual Worksheet filings to determine service providers' required payments for covering, respectively, the costs of NANP and LNP administration.[27]

8. The Act directs the Commission to "assess and collect regulatory fees to recover the costs of carrying out" the functions of the Commission,[28] including "enforcement activities, policy and rulemaking activities, user information services, and international activities."[29] Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.[30] Service providers[31] must pay federal regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.[32]

2. USAC Authority to Audit Service Providers that File Worksheets

9. Because USAC, Rolka Loube, iconectiv, Welch, and the Commission rely on Worksheets to determine respective payment requirements for administration of the USF, TRS Fund, LNP, NANP,

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aff'd, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002).

[22] 47 CFR §§ 52.17, 52.32.

[23] 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.

[24] *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.)

[25] In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. New Release, Fed. Commc'ns Comm'n, Federal Communications Commission Selects Welch & Co., LLP as the Next North American Numbering Plan Billing & Collection Agent (WCB Apr. 12, 2004), https://www.fcc.gov/document/federal-communications-commission-selects-welch-company-llp-next. In 2007, the billing and collection agent changed its name to Welch LLP. *See* Welch LLP, https://welchllp.com (last visited June 23, 2023); Ottawa Business Journal, *Welch LLP celebrates 100th anniversary in Ottawa* (Feb. 8, 2018), https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa.

[26] *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 LNP administrator).

[27] 47 CFR §§ 52.17(b), 52.32(b).

[28] 47 U.S.C. § 159(a); *see also id.* § 156(a).

[29] *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14192.

[30] *See* 47 CFR §§ 1.1152–1.1156, 1.1157(b).

[31] *See* Federal Communications Commission, *Regulatory Fees*, https://www.fcc.gov/licensing-databases/fees/regulatory-fees (identifying Commission licensees and other regulated entities that must pay federal regulatory fees) (last visited June 23, 2023).

[32] *See* 47 CFR § 1.1154.

and federal regulatory fees, the accuracy and timeliness of Worksheet filings are vital. The Commission's rules therefore grant USAC authority to audit any service provider reporting data to USAC in the Worksheets.[33] To enable USAC to conduct audits, the Commission's rules require service providers to retain, for at least five years from the date of USF contributions, all records required to demonstrate to an auditor that the USF contributions made were in compliance with the Commission's universal service rules, including, without limitation, financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.[34] USAC's audit authority furthers the objective to ensure that service providers "contribute, on an equitable and nondiscriminatory basis" to the Commission's universal service support mechanisms.[35]

3. FCC Requirements to Maintain Documentation Supporting Worksheets and to Provide Documentation to USAC or the FCC Upon Request

10. Because the Commission, through USAC, must be able to verify that each service provider is fully compliant with the Commission's Worksheet reporting requirements, the Commission's rules also establish the ability of USAC and the FCC to review documents that support the accuracy of information reported in Worksheets.[36] In order to further the goals of truthfulness and accuracy, section 54.711(a) of the Commission's rules provides that USAC has the authority to verify any information contained in Annual and Quarterly Worksheets.[37] 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.[38]

11. 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.[39] A service provider's failure to comply with the Worksheet reporting and documentation 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."[40] The effects on the administration of the TRS Fund, 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.[41] As a consequence

[33] *See id.* § 54.707.

[34] *See id.* § 54.706(e).

[35] *See* 47 U.S.C. § 254(d).

[36] *See* 47 CFR § 54.711(a).

[37] *See id.*

[38] *See id.*

[39] *See id.* § 54.711(a); *Telseven NAL*, *supra* note 6, 27 FCC Rcd at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, *supra* note 6, 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).

[40] 47 U.S.C. § 254(d).

[41] *See, e.g.*, *Telseven NAL*, *supra* note 6, 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).

of this evasion, other service providers carry an unfair burden of funding the USF and the other federal regulatory requirements arising under the Act.[42] 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 on time, as required under the Commission's rules.[43]

B. Factual Background

12. Enhanced is a limited liability corporation that was organized in the State of Oklahoma on February 6, 1998.[44] The Company is a reseller of interstate and international telecommunications services.[45] Enhanced provides "mobile communications services for voice and data, internet surfing services, traditional 1+ long distance services, web, cloud and data-based services."[46] The Company is headquartered in Bartlesville, Oklahoma,[47] and began providing interstate telecommunications services to end users in February of 1998.[48]

13. Between March 29, 2017, and August 24, 2022, USAC repeatedly tried to verify the accuracy of data reported in Enhanced's Annual Worksheet filings for 2017 through 2022; and, in particular, substantial decreases in certain interstate, international and total revenues; revenues from alleged reseller customers; non-telecommunications revenues; and revenues collected from customers to recover the Company's USF contributions.[49] As detailed more fully below, the Company, however, repeatedly failed to respond or submitted non-responsive documents, unsubstantiated claims, or late responses, thereby repeatedly preventing USAC from verifying the accuracy of the Annual Worksheet filings over the course of the nearly five-and-a-half year period.[50] Enhanced did not provide USAC the documentation needed to complete the verification process for the Annual Worksheets for 2017 through 2022 until October 20, 2022.[51]

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[42] *See Telseven NAL*, *supra* note 6, 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.

[43] *See Telseven NAL*, *supra* note 6, 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.

[44] Revised Response to Letter of Inquiry, from Leon Nowalsky, Nowalsky & Gothard, Counsel to Enhanced Communications Group, LLC, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, at 1, Response to Question 1 (May 31, 2022) (on file in EB-IHD-22-00033161) (Revised LOI Response).

[45] *See* Universal Service Administrative Company, https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=821178 (stating in Annual Worksheets that Enhanced provides "Toll Reseller" and "Cellular/PCS/SMR (wireless telephony inc. by resale)" services) (last visited June 23, 2023); *International Authorizations Granted*, Public Notice, 14 FCC Rcd 9992 (IB June 22, 1999); *see also* 47 CFR § 54.706(a) (identifying resale of interstate service, personal communications services (PCS), and cellular telephone, paging, mobile radio services as telecommunications).

[46] Revised LOI Response at 6, Response to Question 13 ("In addition, ECG sells and leases eBikes, eMotorcycles and eChoppers").

[47] *Id*. at 1, Response to Question 3.

[48] *Id.* at 6, Response to Question 14.

[49] Letter from Fred Theobald, Director of Contributor Operations, Universal Service Administrative Company, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Apr. 12, 2023) (on file in EB-IHD-22-00033161) (April 2023 USAC Letter).

[50] *Id*. at 1.

[51] *Id.*

1. Failures to Provide Documentation Supporting the 2017 Annual Worksheet

14. On March 27, 2017, Enhanced filed its 2017 Annual Worksheet.[52] On March 29, 2017, USAC requested documentation that supported a large decrease in the Company's reported percentage of interstate and international long distance revenue on Line 414.1 of the Worksheet.[53] The response deadline was April 5, 2017, but the Company failed to respond by the deadline.[54] This was its *first* failure to comply with a response deadline between March 29, 2017, and August 24, 2022. On May 1, 2017, USAC again requested the supporting documentation.[55] On May 21, 2017, the Company did not provide supporting documentation and claimed, "actual traffic was significantly less in interstate revenues. The new customers added to the company's revenue stream in 2016 made significantly more intrastate calls. The existing customer base minutes of use demand was much more intrastate based."[56] To attempt to verify the validity of the Company's claim and the accuracy of the 2017 Annual Worksheet, USAC, on May 25, 2017, requested the total, interstate, and international revenue breakdowns to support the revenues reported on Line 414.1 of the 2017 Annual Worksheet.[57]

15. Enhanced did not provide the supporting documentation. Instead, on September 6, 2017, Enhanced filed a revision to its 2017 Annual Worksheet.[58] On October 16 and 20, 2017, USAC again requested documentation supporting interstate and international revenues reported on Line 414.1 of the revised Worksheet.[59] The response deadline was October 23, 2017, but the Company failed to respond by the deadline, its *second* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[60] On September 30, 2019, and February 7 and March 10, 2020, USAC informed the Company that it had still not responded to USAC's documentation requests concerning the 2017 Annual Worksheet.[61] On December 23, 2020, Enhanced filed another revision to its 2017 Annual Worksheet, and again, USAC requested documentation that supported the revised filing.[62] The Company did not submit the supporting documentation.[63] On April 12, 2021, USAC informed the Company that it was not in compliance with the Commission's reporting and documentation requirements with regard to the revised 2017 Annual Worksheet.[64]

2. Failures to Provide Documentation Supporting the 2018 Annual Worksheet

16. Enhanced filed its 2018 Annual Worksheet on March 28, 2018.[65] On October 11, 2018, USAC requested documentation to support revenues reported on Line 309 of the 2018 Annual Worksheet.

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[52] *Id.*

[53] *Id.*

[54] *Id*.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.* at 1-2. USAC observed that in the revised 2017 Annual Worksheet, Enhanced shifted revenues from Line 414.1 to Block 3 of the Worksheet (which are not subject to USF assessments), and the Company reported the same amounts of interstate and international revenues that it reported in the original March 27, 2017 filing. *Id.* at 2 n.1.

[60] *Id*. at 2.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

In particular, USAC requested documentation identifying Enhanced's reseller customers, the reseller customers' FCC Filer ID Numbers, and amounts that the Company billed the reseller customers in 2017.[66] The response deadline was October 18, 2018, but the Company failed to respond by the deadline.[67] This was its *third* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.

17. Enhanced filed a revision to its 2018 Annual Worksheet on December 23, 2020.[68] On the same day, USAC requested documentation to support the revised filing, including the documentation USAC requested on October 11, 2018.[69] When the Company did not respond, USAC requested the documentation again on January 13, 2021, and provided Enhanced with a response deadline of January 27, 2021.[70] The company did not respond by this deadline, its *fourth* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[71] USAC again requested the documentation on February 9, March 19, and April 12, 2021.[72] On June 2, 2021, USAC informed Enhanced that because the Company did not comply with the documentation requirements, USAC rejected the Company's December 23, 2020 revision to the 2018 Annual Worksheet filing.[73] USAC instructed Enhanced to file a corrected 2018 Annual Worksheet by July 2, 2021.[74] USAC also directed Enhanced to provide by July 2, 2021, documentation supporting revenues reported in the 2018 Annual Worksheet revision. USAC informed the Company that if it failed to file the revisions, USAC would make the revisions to the 2018 Annual Worksheet.[75] This would enable USAC to issue invoices to the Company for USF contributions, even though the Company was not complying with the reporting and documentation requirements.[76] Enhanced failed to file a corrected 2018 Annual Worksheet, and provide supporting documentation, by July 2, 2021, the Company's *fifth* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[77] On July 8, 2021, USAC made the revisions to the 2018 Annual Worksheet to enable USAC to issue USF invoices.[78]

3. Failures to Provide Documentation Supporting the 2019 Annual Worksheet

18. On April 4, 2019, Enhanced filed its 2019 Annual Worksheet.[79] On September 30, 2019,

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[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.* at 2 n.2. Under the Commission's rules, USAC has the authority to verify the accuracy of any information reported by service providers in Worksheets and this authority necessarily includes the discretion to reject Worksheets containing incomplete or inaccurate information. *See, e.g.*, 47 CFR §§ 54.706(e), 54.711(a); *Federal-State Joint Board on Universal Service*, Order, 22 FCC Rcd 4925, 4931, paras. 21-22 (WCB 2001).

[74] April 2023 USAC Letter, *supra* note 49, at 2.

[75] If a service provider fails to file an accurate Worksheet by a filing deadline, USAC "shall bill that [service provider] based on whatever relevant data [USAC] has available, including, but not limited to, the number of lines presubscribed to the [service provider] and data from previous years, taking into consideration any estimated changes in such data." 47 CFR. § 54.709(d).

[76] April 2023 USAC Letter, *supra* note 49, at 3.

[77] *Id.*

[78] *Id.*

[79] *Id.*

USAC requested the following supporting documentation: (a) a calendar year 2018 General Ledger[80] or another comparable 2018 calendar year financial statement supporting the total gross billed revenues reported on the 2019 Annual Worksheet; (b) the Company's federal income tax return for 2018; (c) documentation showing how revenue items listed on the General Ledger were utilized to report total, interstate and international revenues on Lines 304 to 314 and 404 to 418 of the 2019 Annual Worksheet; and (d) documentation supporting any differences between the revenues reported on the 2019 Annual Worksheet and revenues identified in the financial statements provided by the Company.[81] USAC's response deadline was October 15, 2019, but again, the Company failed to respond by the deadline, its *sixth* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[82]

19. On December 16, 2019, USAC again requested the supporting documentation and the response deadline was January 16, 2020, but the Company again failed to respond by the deadline, its *seventh* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[83] On January 28, 2020, USAC again requested the supporting documentation, and on February 12, 2020, the Company provided only the 2018 income statement and 2018 federal income tax return.[84] Enhanced also stated that the items on Line 418.3 on the 2019 Annual Worksheet represented "equipment sales, internet access, and management fees. The tax mapping is that wireless sales are at the FCC safe harbor percentage and traditional long distance toll service is reported at actual jurisdictional traffic results."[85] This unsupported statement did not comply with USAC's directive to provide (a) documentation showing how revenue items listed on the 2018 income statement were utilized to report total, interstate, and international revenues on Lines 304 to 314 and 404 to 418 of the 2019 Annual Worksheet; and (b) documentation supporting any differences between the revenues reported on the 2019 Annual Worksheet and revenues identified in the financial statements provided by the Company.[86] On March 10, 2020, USAC again requested documentation showing how revenue items listed on the Company's 2018 income statement were used to report total, interstate, and international revenues in the 2019 Annual Worksheet, and in particular, USAC requested that the Company identify the Lines on the 2019 Annual Worksheet that Enhanced reported the "MRC," "USAGE," and "Wireless Income" revenue items listed on the income statement.[87] On May 4, 2020, USAC informed the Company that it had still not responded to USAC's requests for documentation supporting the 2019 Annual Worksheet.[88]

20. On October 21, 2020, USAC informed Enhanced that the Company also potentially misreported revenues on Line 403 of its 2019 Annual Worksheet, which is used to report revenues obtained by billing end users to recover USF contributions.[89] In response, Enhanced provided updated

[80] A general ledger is the master set of accounts that summarize all transactions and is used to aggregate information into the financial statements of a business. AccountingTools, *General ledger definition* (Nov. 15, 2022), https://www.accountingtools.com/articles/general-ledger.

[81] April 2023 USAC Letter, *supra* note 49, at 3.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.* Enhanced's February 12, 2020 statement was not clear, but Enhanced presumably used the term, "tax mapping" in an alleged attempt to answer USAC's request to provide documentation showing how the Company utilized revenue data in the Company's documentation to report revenues on specific Lines of the Annual Worksheet.

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

[87] USAC also requested that Enhanced provide documentation identifying the specific services that were included in the "MRC," "USAGE," and "Wireless Income" revenue items listed on the income statement. *Id.* at 4.

[88] *Id.*

[89] *Id.*

USF recovery revenues to USAC on December 22, 2020, and filed a revision to its 2019 Annual Worksheet on December 23, 2020.[90] On December 23, 2020, USAC requested the following documentation to support the revised 2019 Annual Worksheet: (a) the Company's General Ledger for the calendar year 2018; (b) documentation showing the Lines of the 2019 Annual Worksheet that were used to report the revenue items listed on the General Ledger; (c) any documentation other than the General Ledger that the Company used to determine interstate and international revenues reported on the revised 2019 Annual Worksheet; and (d) invoices from Enhanced's five largest paying customers for January, April, July, and October 2018.[91] USAC requested this documentation again on January 13, 2021, and provided Enhanced with a response deadline of January 27, 2021.[92] The Company again did not respond by the deadline.[93] This was its *eighth* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[94] USAC requested the documentation again on February 9, March 19, and April 12, 2021.[95]

21. On June 2, 2021, USAC informed Enhanced that because the Company did not comply with the documentation requirements, USAC rejected the Company's December 23, 2020 revision to the 2019 Annual Worksheet filing.[96] USAC instructed Enhanced to file a revised 2019 Annual Worksheet, and provide documentation supporting the revised filing, by July 2, 2021.[97] USAC again informed the Company that if it failed to file the revised Worksheet, USAC would make the revisions.[98] Enhanced failed to file the revision to its 2019 Annual Worksheet, and provide supporting documentation, by July 2, 2021, the Company's *ninth* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[99] On July 8, 2021, USAC made the revisions in order to issue USF invoices.[100]

4. Failures to Cooperate with USAC Audit Concerning the 2020 Annual Worksheet

22. On March 31, 2020, Enhanced filed its 2020 Annual Worksheet.[101] On April 16, 2021, USAC informed Enhanced that it was auditing the accuracy and completeness of the Company's 2020 Annual Worksheet and the accuracy of federal USF recovery surcharges on its customer invoices for 2019.[102] USAC provided the Company with audit documents that included a document request with a response deadline of April 30, 2021.[103] USAC provided the audit documents through Box, a secure file

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.* at 4-5. *See* 47 CFR § 54.706(e) (service providers must 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"); *id.* § 54.707 (establishing USAC authority to conduct audits).

[103] April 2023 USAC Letter, *supra* note 49, at 5.

sharing platform, and requested that Enhanced confirm receipt of the audit documents.[104] When no confirmation was provided by the Company, USAC again requested confirmation on April 21, 2021, and again received no response.[105] On April 26, 2021, USAC contacted Enhanced's consultant, which the Company had designated as its primary point of contact, to request confirmation a third time.[106] The Company's consultant informed USAC that he refused to use USAC's secure file sharing system and that USAC must e-mail him the audit documents.[107] Enhanced's consultant claimed he refused to access the file-sharing platform because it involved using "an unsecured link to an unknown site."[108] On April 28, 2021, USAC informed the Company that USAC's data security policies prohibit USAC from sending confidential documents through an unsecured e-mail, and "Box is a well-established secure document exchange platform that is a FEDRAMP certified solution."[109] On April 30, 2021, the deadline for the Company to respond to the Initial Document Request expired. This was its *tenth* failure to comply with a deadline to provide supporting documentation between March 29, 2017, and August 24, 2022.

23. On May 5, 2021, Enhanced's consultant again refused to utilize the file-sharing platform and requested USAC send him the audit documents by certified mail, which as USAC observed, would have further delayed the audit.[110] The Company also requested a new deadline to respond to the Initial Document Request.[111] On May 12, 2021, Enhanced finally agreed to have another Company representative access the audit documents through the file-sharing platform.[112] On the same day, USAC gave the Company a deadline of May 27, 2021, to respond to the Initial Document Request and informed the Company that given the audit delays already experienced it could not provide a further deadline extension.[113] Enhanced did not submit responses to the Initial Document Request by May 27, 2021, its *eleventh* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[114] On June 2, 2021, USAC informed the Company that given its failures to cooperate with the audit, USAC was terminating the audit and referring the matter to the FCC's Enforcement Bureau (Bureau).[115]

5. Further Failure to Provide Documentation Supporting the 2020 Annual Worksheet

24. On March 21, 2022, USAC informed Enhanced that it rejected the Worksheet filing due to the Company's failure during the audit process to provide documentation supporting its wholesale and non-telecommunications revenues reported in the 2020 Annual Worksheet.[116] USAC directed the Company to file a revised 2020 Annual Worksheet, with an April 20, 2022 deadline, and provide

[104] *Id.* Box is a secure file-sharing platform that the Commission also utilizes for investigations conducted by the Bureau. *See* Box, https://www.box.com (last visited June 23, 2023).

[105] April 2023 USAC Letter, *supra* note 49, at 5.

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *Id.* FedRAMP is the "Federal Risk and Authorization Management Program," which standardizes security assessment and authorization for cloud products and services used by federal agencies to make sure data is consistently protected at a high level. *See* FedRamp, https://www.fedramp.gov/ (last visited June 23, 2022).

[110] April 2023 USAC Letter, *supra* note 49, at 5.

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

documentation to support the reported wholesale and non-telecommunications revenues.[117] Specifically, USAC directed Enhanced to provide the following documentation to support the 2020 Annual Worksheet: (a) audited financial records or the federal income tax return for 2019, including documentation supporting the total revenues for 2019 and any variance between total revenues identified on the documentation and total revenues reported on the 2020 Annual Worksheet; (b) documentation of wholesale customers with revenues reported in Block 3 of the 2020 Annual Worksheet, including each customer's FCC Filer ID Number, name, total, interstate and international revenues, reseller certificate signature date, documentation clarifying any variance between the total revenues collected from the wholesale customers and revenue reported on Line 315 of the 2020 Annual Worksheet, and samples of 2019 invoices to the wholesale customers; (c) documentation identifying all services sold in 2019 and for each service, the name, description, total, interstate and international revenues, the Line the revenue was reported in the 2020 Annual Worksheet, and documentation supporting the correct Line that the revenue should be reported; and (d) invoices for the Company's five customers assessed the most federal USF surcharges in 2019, and for each invoice documentation showing how the USF surcharge to the customer was calculated.[118] The Company did not submit the requested documentation for the 2020 Annual Worksheet by April 20, 2022.[119] This was its *twelfth* failure to comply with a response deadline between March 29, 2017, and August 24, 2022. The Company also did not file a revised 2020 Annual Worksheet that complied with the FCC's reporting requirements.[120] On April 26, 2022, USAC created the revised Worksheet so that USAC could issue USF invoices to Enhanced.[121]

25. USAC also observed that the Company failed to provide valid reseller certificates to support revenues reported on Lines 309 and 315 of the 2020 Annual Worksheet.[122] Reseller certificates supporting the 2020 Annual Worksheet, which is used to report 2019 revenues, must be executed in 2019, but Enhanced submitted alleged reseller certificates executed in 2022.[123] The reseller certificates submitted by Enhanced also included alleged certificates for Unified Signal, Inc. (Unified Signal) and Furrion, LLC (Furrion), which were *de minimis* in 2019 and thus could not be reported as resellers in 2019.[124] Additionally, USAC found that the total revenues for Enhanced's list of resellers was nearly

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

[118] *Id*. at 6.

[119] *Id*.

[120] *Id*.

[121] *Id.* On June 3, 2022, Enhanced attempted to file a revised 2020 Annual Worksheet, with a downward revision to Line 423, the net universal service contribution base revenues, and USAC rejected the filing because it was outside the deadline for filing downward revisions to universal service contribution base revenues. *Id.* There is a one-year deadline for filing downward revisions to Annual Worksheets, and so the deadline for filing revisions to the 2020 Annual Worksheet was March 31, 2021. *See, e.g.*, *2020 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd at 1374; Universal Service Administrative Company, https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/ (last visited June 23, 2023).

[122] April 2023 USAC Letter, *supra* note 49, at 6. USAC accepts reseller certificates from a wholesaler to verify that the wholesaler had a reasonable expectation that its carrier customers qualify as contributing resellers and will contribute to the USF, and thus the wholesaler need not make USF contributions based on the wholesale revenues. *See, e.g.*, *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14225.

[123] April 2023 USAC Letter, *supra* note 49, at 6.

[124] *Id.* Under section 54.708 of the Commission's rules, 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 contribute to the USF. *See* 47 CFR § 54.708. If a service provider is *de minimis* and thus does not contribute to the USF, then revenues allegedly obtained from the service provider cannot be reported as reseller revenues in the Annual Worksheet. "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." *2020 Annual Worksheet Instructions*, *supra* note 10, 35 FCC (continued….)

$200,000 less than the total revenues reported on Lines 309 and 315 of the 2020 Annual Worksheet.[125] In other words, USAC found that Enhanced over-reported reseller revenues on Lines 309 and 315 (in Block 3 - Carrier's Carrier Revenue Information) of the Annual Worksheet by nearly $200,000. By over-reporting revenues in Block 3, Enhanced under-reported revenues on Line 420, the Company's net universal service contribution base revenues, and thereby precluded USAC from fully assessing USF contributions when the contributions were due.

6. Failures to Provide Documentation Supporting the 2021 Annual Worksheet

26. On March 26, 2021, Enhanced filed its 2021 Annual Worksheet, and on June 4, 2021, the Company filed a revision to the Worksheet. On June 16, 2021, USAC directed the Company to provide documentation supporting international revenue reported on Line 414.1 of the revised Worksheet.[126] The deadline for the Company's response was June 23, 2021, and again Enhanced failed to comply, representing the *thirteenth* failure to comply with a document production deadline between March 29, 2017, and August 24, 2022.[127] USAC requested the documentation again on July 15, 2021, and provided an August 14, 2021 deadline to comply.[128] The Company again failed to provide the documentation, the *fourteenth* failure to comply with a documentation production deadline between March 29, 2017, and August 24, 2022.[129] USAC reminded the Company of the pending documentation requests again on August 16 and September 22, 2021.[130]

27. On June 3, 2022, Enhanced filed a second revision to its 2021 Annual Worksheet.[131] On August 17, 2022, USAC again requested documentation to support revenue reported on Line 414.1 of the revised Worksheet.[132] The deadline for the Company to respond was August 24, 2022, but again Enhanced did not comply.[133] This was its *fifteenth* failure to comply with a documentation production deadline concerning the Company's Annual Worksheets between March 29, 2017, and August 24, 2022.

7. Failures to Provide Documentation Supporting the 2022 Annual Worksheet

28. Enhanced filed its 2022 Annual Worksheet on March 22, 2022.[134] On May 10, 2022, USAC requested documentation to support the large decrease in non-telecommunications revenue reported on Line 418 of Enhanced's 2022 Annual Worksheet.[135] USAC also requested documentation to

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Rcd at 1396 (citing *Universal Serv. Contribution Methodology*, Order, 27 FCC Rcd 13780, 13781-82, para. 3 (2012)).

[125] April 2023 USAC Letter, *supra* note 49, at 6-7.

[126] USAC observed that the Company misapplied the Safe Harbor rate of 37.1% to Line 414.1, and requested a traffic study to support the revenues reported on Line 414.1 of the 2021 Annual Worksheet. *Id.* at 7. *See 2021 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd at 13720-23 (discussing use of safe harbor percentages and traffic studies for reporting interstate and international revenues).

[127] April 2023 USAC Letter, *supra* note 49, at 7.

[128] *Id*.

[129] *Id*.

[130] *Id*. USAC also placed Enhanced's 2021 Annual Worksheet in "Issue-Carrier Response Required" status on September 22, 2021. *Id.*

[131] *Id*.

[132] USAC observed that the Company continued to misapply the Safe Harbor rate of 37.1% to Line 414.1, and again requested a traffic study to support the revenues reported on Line 414.1 of the 2021 Annual Worksheet. *Id*.

[133] *Id*.

[134] *Id*.

[135] *Id*.

support the accuracy of the interstate and international revenues reported on the 2022 Annual Worksheet, and to demonstrate why the Company substantially over-projected interstate and international revenues in its Quarterly Worksheets due on November 1, 2020, February 1, May 1, and August 1, 2021.[136] The Company's response was due by May 17, 2022, but the Company did not respond, its *sixteenth* failure to comply with a response deadline between March 29, 2017, and August 24, 2022.[137]

29. On June 3, 2022, Enhanced filed a revision to its 2022 Annual Worksheet.[138] On July 29, 2022, USAC requested documentation to support the accuracy of the interstate and international revenues reported on the revised 2022 Annual Worksheet, and to demonstrate why the Company substantially over-projected interstate and international revenues in its Quarterly Worksheets.[139] The Company's response was due by August 7, 2022. The Company did not respond, the *seventeenth* failure to comply with a document production deadline between March 29, 2017, and August 24, 2022.[140]

30. When reviewing documentation that Enhanced provided in response to a March 23, 2022 Letter of Inquiry (LOI) from the Bureau, USAC observed that the Company failed to provide valid reseller certificates to support revenues reported on Lines 309 and 315 of the Company's 2022 Annual Worksheet.[141] Reseller certificates submitted by Enhanced to support the 2022 Annual Worksheet included certifications by Unified Signal, one allegedly signed on March 30, 2022, a second allegedly signed on May 10, 2022.[142] However, Unified Signal was not a contributor to the USF in 2021, and the alleged reseller's FCC Filer ID Number was deactivated in 2020.[143] Reseller certificates submitted by Unified Signal, and reseller certificates allegedly signed in 2022, do not support wholesaler revenues reported in Enhanced's 2022 Annual Worksheet, which is used to report 2021 revenues.[144] In its 2022 Annual Worksheet, Enhanced nonetheless reported approximately $87,000 of its revenues as reseller revenues allegedly received from Unified Signal.[145]

8. Summary and Impact of Enhanced's Worksheet Documentation Failures

31. In summary, between March 29, 2017, and August 24, 2022, Enhanced failed to comply with 17 deadlines to provide USAC with timely, complete, and relevant documentation to support revenues reported in the Company's Annual Worksheet filings for 2017 through 2022. Enhanced failed to comply with deadlines to provide supporting documentation for the: (a) 2017 Annual Worksheet by April 5 and October 23, 2017; (b) 2018 Annual Worksheet by October 18, 2018, and January 27 and July 2, 2021; (c) 2019 Annual Worksheet by October 15, 2019, January 16, 2020, and January 27 and July 2, 2021; (d) 2020 Annual Worksheet by April 30 and May 27, 2021, and April 20, 2022; (e) 2021 Annual Worksheet by June 23 and August 14, 2021, and August 24, 2022; and (f) 2022 Annual Worksheet by

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[136] *Id*.

[137] *Id*.

[138] *Id*.

[139] *Id*.

[140] *Id.* at 8.

[141] *Id*.

[142] April 2023 USAC Letter, *supra* note 49, at 8. Reseller certificates for 2021 revenues, which are reported in the 2022 Annual Worksheet, must be executed in 2021. *Id*. *See, e.g.*, *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14225-26.

[143] A service provider cannot file Worksheets or pay USF contributions without an active FCC Filer ID Number. *See* April 2023 USAC Letter, *supra* note 49, at 8; *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14202.

[144] April 2023 USAC Letter, *supra* note 49, at 8.

[145] *Id.*

May 17 and August 7, 2022.

32. By precluding USAC from verifying the Company's revenues information in the Annual Worksheet filings for 2017 through 2022, Enhanced has prevented the administrators of the USF, TRS Fund, LNP, NANP, and federal regulatory fee cost recovery requirements from determining whether Enhanced has fully paid its obligations under the Act and the Commission's rules and orders for these important payment requirements.[146] The Commission reserves the right to take further enforcement action against Enhanced for any violations of payment requirements arising under the Act and pursuant to the Commission's rules or orders.

9. Letter of Inquiry

33. On September 13, 2021, USAC referred this matter to the Bureau for investigation of Enhanced's repeated failures to comply with USAC's directives to provide documentation supporting the Company's Annual Worksheets for 2017 through 2021.[147] On March 23, 2022, the Bureau issued an LOI to Enhanced concerning the Company's compliance with requirements arising under the Act and the Commission's rules.[148] On April 27, 2022, Enhanced requested a 30-day extension of time to submit the Company's LOI response.[149] The Bureau granted the extension request, and the Company was given a new deadline of May 23, 2022, to submit the response to the LOI.[150] On May 23, 2022, Enhanced submitted a response to the LOI.[151]

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[146] *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). USAC estimates that Enhanced underpaid the USF by $230,636.89. April 2023 USAC Letter, *supra* note 49, at 9.

[147] *Id*.

[148] *See* LOI. On April 22, 2022, the day the Company's LOI response was due, Enhanced informed the Bureau that the Company could not provide a complete response on time and requested an extension for an unspecified period of time. E-mail from Carla Turner, Accounting Supervisor, Enhanced Communications Group, LLC, to Jeffrey Brown, Honors Attorney, Investigations & Hearings Division, FCC Enforcement Bureau (Apr. 22, 2022, 16:50 EDT) (on file in EB-IHD-22-00033161). Investigation targets must provide a detailed explanation supporting an extension request and provide Bureau staff ample time to consider and respond to the request. Requesting an extension the day the response is due does not give Bureau staff enough time to consider and respond to an extension request.

[149] E-mail from Leon Nowalsky, Counsel to Enhanced Communications Group, LLC, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (Apr. 27, 2022, 15:14 EDT) (on file in EB-IHD-22-00033161).

[150] On May 10, 2022, the Bureau agreed to grant the 30-day extension request. The Bureau and the Company also entered into an agreement to toll applicable statutes of limitations for 90 days. *See* Tolling Agreement executed by Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, and Jeff Holley, Chief Executive Officer, Enhanced Communications Group, LLC (May 18, 2022) (on file in EB-IHD-22-00033161) (Tolling Agreement).

[151] Response to Letter of Inquiry, from Leon Nowalsky, Nowalsky & Gothard, Counsel to Enhanced Communications Group, LLC, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (May 23, 2022) (on file in EB-IHD-22-00033161) (LOI Response). The Company informed the Bureau that Enhanced would supplement its LOI response after the Company's internal financial reports were corrected. E-mail from Leon Nowalsky, Nowalsky & Gothard, Counsel to Enhanced Communications Group, LLC, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (May 23, 2022, 15:49 EDT) (on file in EB-IHD-22-00033161) (May 23, 2022, Counsel E-mail). On May 27, 2022, Enhanced provided the Company's unaudited income statements for 2019 through 2021, and on May 31, 2022, Enhanced submitted a revised LOI response. *See* E-mail from Leon Nowalsky, Nowalsky & Gothard, Counsel to Enhanced Communications Group, LLC, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (May 27, 2022, 11:23 EDT) (on file in EB-IHD-22-00033161) (May 27, 2022, Counsel E-

(continued….)

10. Failures to File Accurate Annual Worksheets

34. In response to the Bureau's March 23, 2022 LOI, the Company provided documentation that enabled USAC to analyze the accuracy of the Company's Annual Worksheets for 2019 through 2021.[152] On September 23, 2022, USAC requested documentation from the Company concerning non-telecommunications revenue and wholesale revenue reported in the Enhanced Communications' Annual Worksheets for 2017 through 2019, and the Company provided the documentation on October 7, 2022.[153] USAC requested additional documentation concerning non-telecommunications revenue and wholesale revenue on October 18, 2022, which the Company provided on October 20, 2022, and which finally enabled USAC to complete the process of verifying the Annual Worksheets for 2017 through 2022.[154]

35. On March 2, 2023, USAC informed the Company that USAC rejected the Annual Worksheets for 2017 through 2022 filed by Enhanced Communications.[155] USAC partially denied the Company's reported reseller revenue on Line 309 of the Annual Worksheets.[156] USAC denied the reported wholesale revenues from alleged reseller Unified Signal because the reseller certificate for Unified Signal was invalid, and the Company did not otherwise show that revenues from Unified Signal were exempt from USF contributions.[157]

36. USAC directed the Company to file revisions to the Annual Worksheets for 2017 through 2022 that complied with the FCC's reporting rules within 30 days, and Enhanced filed revised versions of those six Worksheets on April 5, 2023.[158] USAC, however, rejected each of Enhanced's revised filings because, based on the documentation provided in the Company's LOI response and provided to USAC on October 20, 2022, Enhanced's reported revenues were inaccurate. On April 7, 2023, USAC issued estimates for the 2017 through 2022 Annual Worksheets, which were based on the Company's documentation. USAC estimated that Enhanced underpaid a total of $230,636.89 to the USF.[159] On May

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mail); Revised LOI Response, *supra* note 44. Enhanced provided an additional LOI response on June 3, 2022, informing the Bureau it filed revised Annual Worksheets for 2020 through 2022 in order to correct earlier Worksheet filings. E-mail from Leon Nowalsky, Nowalsky & Gothard, Counsel to Enhanced Communications Group, LLC, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (June 3, 2022, 14:52 EDT) (on file in EB-IHD-22-00033161) (June 3, 2022 Counsel E-mail). USAC rejected the 2020 through 2022 Annual Worksheet revisions that Enhanced filed on June 3, 2022, because they were also inaccurate. April 2023 USAC Letter, *supra* note 49, at 6-7.

[152] April 2023 USAC Letter, *supra* note 49, at 8.

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] Based on the review of the Company's LOI response and on the documentation provided to USAC in October of 2022, USAC accepted Enhanced's reporting of non-telecommunications revenue reported on Line 418.3 of the Annual Worksheets for 2017 through 2022. April 2023 USAC Letter, *supra* note 49, at 9 & n.11.

[157] *Id.* at 9 (citing *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14223-26). Valid reseller certificates are acceptable to verify that a wholesaler had a reasonable expectation that its carrier customers qualify as contributing resellers and will contribute to the USF, and thus the wholesaler need not make USF contributions based on the wholesale revenues. *See, e.g.*, *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14225.

[158] April 2023 USAC Letter, *supra* note 49, at 9.

[159] USAC estimated that Enhanced Communications underpaid (1) $7,949.09 based on the 2022 Annual Worksheet, an underpayment of 16% for the year; (2) $24,290.67 based on the 2021 Annual Worksheet, an underpayment of 1,018% for the year; (3) $50,655.17 based on the 2020 Annual Worksheet, an underpayment of 101% for the year; (4) $62,608.51 for the 2019 Annual Worksheet, an underpayment of 131% for the year; (5) $49,088.90 for the 2018 Annual Worksheet, an underpayment of 4,579% for the year; and (6) $36,044.55 for the 2017 Annual Worksheet, an
(continued….)

15, 2023, USAC issued an invoice to the Company to recover the $230,636.89 estimated underpayment.[160]

III. DISCUSSION

A. Enhanced Apparently Violated a Commission Rule by Failing to Provide USAC Documentation Supporting the Company's Annual Worksheets

37. Based on evidence developed through the Bureau's investigation, the Company apparently willfully and repeatedly violated section 54.711(a) of the Commission's rules by failing to comply with USAC directives to provide documentation supporting the accuracy of Enhanced's Annual Worksheet filings for 2017 through 2022.[161] Specifically, Enhanced failed to comply with 17 deadlines to provide USAC with timely, complete, and relevant documentation to support revenues reported in the Company's Annual Worksheet filings, as follows: (a) 2017 Annual Worksheet by April 5 and October 23, 2017; (b) 2018 Annual Worksheet by October 18, 2018, and January 27 and July 2, 2021; (c) 2019 Annual Worksheet by October 15, 2019, January 16, 2020, January 27 and July 2, 2021; (d) 2020 Annual Worksheet by April 30 and May 27, 2021, and April 20, 2022; (e) 2021 Annual Worksheet by June 23 and August 14, 2021, and August 24, 2022; and (f) 2022 Annual Worksheet by May 17 and August 7, 2022.[162]

38. Companies that file Worksheets are required to maintain documentation to justify the information reported in the Worksheets and provide it to the Commission or USAC upon request.[163] 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.[164] To verify the accuracy of the Company's Annual Worksheet filings for 2017 through 2022, USAC directed the Company to provide documentation that supported substantial decreases in the Company's interstate, international and total revenues; revenues from alleged reseller customers; non-telecommunications revenues; and revenues collected from customers to recover the Company's USF contributions. USAC's documentation

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underpayment of 119% for the year. Letter from Fred Theobald, Director of Contributor Operations, Universal Service Administrative Company, to Jeffrey Brown, Honors Attorney, Investigations & Hearings Division, FCC Enforcement Bureau (June 26, 2023) (on file in EB-IHD-22-00033161) (June 2023 USAC Letter).

[160] *Id*. at 1.

[161] 47 CFR § 54.711(a).

[162] As discussed below, 4 of these 17 failures to submit supporting documentation by USAC's deadlines on April 20, May 17, and August 7 and 24, 2022, occurred within the statute of limitations. *See* 47 U.S.C. § 503(b)(6); Tolling Agreement, *supra* note 150.

[163] *See* 47 CFR § 54.711(a) ("Contributors shall 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."); *id*. § 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.").

[164] *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 2, 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).

directives were not unusual and were consistent with the Commission's rules.[165]

39. 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, complete, 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.[166] We consider each individual failure to respond fully and accurately by a deadline to be a separate violation of section 54.711(a) of the Commission's rules.[167]

40. Enhanced claimed it failed to respond to one of the 17 documentation deadlines from USAC—USAC's May 12, 2021 request, which had a deadline of May 27, 2021—because the Company's management changed in 2020.[168] The Company claimed that USAC's correspondence was addressed to a former employee, and "at the time the correspondence was sent, the CORES data base listed [a current employee] as the contact person for [Enhanced] rather than [the former employee]."[169] This is inaccurate. USAC's May 12, 2021, documentation request was sent by E-mail to the same employee that Enhanced identified as the contact person listed in CORES (not the former employee identified by Enhanced in the Company's LOI Response).[170] In fact, USAC spoke to the Enhanced employee by telephone earlier that day.[171]

41. We find that the Company apparently willfully and repeatedly violated section 54.711(a) of the Commission's rules by failing to comply with USAC's directives to provide documentation supporting the accuracy of the Company's Annual Worksheets. Specifically, Enhanced failed to submit timely and complete responses to USAC in response to directives with 17 separate due dates over approximately a five-and-one-half-year period between March 29, 2017, and August 24, 2022.[172] Enhanced failed to submit documentation requested by USAC for the (a) 2017 Annual Worksheet by April 5 and October 23, 2017; (b) 2018 Annual Worksheet by October 18, 2018, and January 27 and July 2, 2021; (c) 2019 Annual Worksheet by October 15, 2019, January 16, 2020, January 27 and July 2, 2021; (d) 2020 Annual Worksheet by April 30 and May 27, 2021, and April 20, 2022; (e) 2021 Annual

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[165] *See* 47 CFR §§ 54.706(e), 54.707, 54.711(a).

[166] In this case, USAC began requesting supporting documentation for the 2017 Worksheet on March 29, 2017, and did not obtain the documentation needed to verify the Annual Worksheet filings for 2017 through 2022 until October 20, 2022, more than a five-and-a-half year period. *See* April 2023 USAC Letter, *supra* note 49, at 1.

[167] *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.

[168] *See* LOI Revised Response, *supra* note 44, at 20, Response to Question 41. USAC's correspondence on May 12, 2021 concerned USAC's audit of the Company's 2020 Annual Worksheet. *Id.*

[169] *Id.* CORES is the Commission's Registration System. *See* Federal Communications Commission, *Commission Registration System for the FCC*, https://www.fcc.gov/licensing-databases/commission-registration-system-fcc (last visited June 23, 2023).

[170] *See* Revised LOI Response, *supra* note 44, at 20, Response to Question 41.

[171] *See* April 2023 USAC Letter, *supra* note 49, at 5 n.6. The Company is obligated to update Company representatives within one week of a change by filing a revised Annual or Quarterly Worksheet. *See, e.g.*, *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14199.

[172] *See* April 2023 USAC Letter, *supra* note 49, at 1.

Worksheet by June 23 and August 14, 2021, and August 24, 2022; and (f) 2022 Annual Worksheet by May 17 and August 7, 2022.

B. Enhanced Apparently Violated a Commission Rule by Failing to Comply with Documentation Directives in Connection with a USAC Audit

42. Under the Commission's rules, USAC has the authority to audit any service provider reporting data to USAC.[173] Additionally, service providers must retain, for at least five years from the date of USF contributions, all records required to demonstrate to an auditor that the USF contributions made were in compliance with the Commission's universal service rules.[174] A service provider must comply with USAC directives to provide documentation supporting Annual and Quarterly Worksheet filings, and to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules.[175] Compliance with the documentation retention and production requirements are especially critical in the context of a USAC audit of compliance with the FCC's reporting and contribution requirements.

43. On April 16, 2021, USAC attempted to audit the accuracy and completeness of the Company's 2020 Annual Worksheet and the accuracy of federal USF recovery surcharges on the Company's 2019 customer invoices.[176] Pursuant to the audit, USAC requested documents from the Company by April 30, 2021, and the Company failed to comply with the documentation production requirement.[177] USAC gave the Company a second opportunity to comply with the documentation production directive by May 27, 2021, and again, Enhanced failed to comply with the requirement.[178] On June 2, 2021, USAC therefore terminated the audit and informed the Company that USAC was referring the matter to the Bureau.[179]

44. USAC's ability to verify the accuracy of Worksheets on behalf of the Commission by auditing a service provider is another key component of implementing the Congressional directive to ensure the equitable and non-discriminatory distribution of universal service costs among all service providers.[180] We conclude that Enhanced's repeated refusals to comply with the documentation requirements between March 29, 2017, and August 24, 2022, and particularly the Company's failures to comply with documentation production directives during USAC's attempted audit, demonstrate a cavalier disregard for the documentation retention and production, reporting, and contribution requirements established under the Commission's rules pursuant to the Act.

C. Enhanced Repeatedly Filed Inaccurate Annual Worksheets

45. Based on the evidence developed through the Bureau's investigation, we find that Enhanced apparently willfully and repeatedly violated sections 52.17(b), 52.32(b), 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by filing inaccurate Annual Worksheet filings for 2017 through 2022.[181] The Act directs the Commission to establish, administer, and

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[173] *See* 47 CFR § 54.707.

[174] *See id.* § 54.706(e).

[175] *See id.* §§ 54.706(e), 54.711(a).

[176] April 2023 USAC Letter, *supra* note 49, at 5.

[177] *Id*.

[178] *Id*.

[179] *Id*.

[180] *See* 47 U.S.C. § 254(d).

[181] *See* 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, *supra* note 10, 34 (continued….)

maintain programs to promote universal service, TRS, and to ensure LNP and effective numbering administration more generally, among other mandates.[182] To help accomplish these goals, the Commission has established the USF, the TRS Fund, and cost recovery requirements for LNP and NANP. As Congress has directed,[183] the Commission funds these programs though assessments on service providers. To gather the data necessary to calculate the assessments, the Commission requires service providers to file Annual Worksheets reporting the providers' revenues from various types of services during the preceding calendar year.[184] The administrators of the USF, TRS, LNP, and NANP rely upon the accuracy of reported data to calculate accurately any necessary contributions.[185] The Commission also uses the Annual Worksheet data to calculate and assess annual regulatory fees in accordance with the Act.[186]

46. On March 2, 2023, after USAC obtained documentation from Enhanced that enabled USAC to assess the accuracy of the Company's 2017 through 2022 Annual Worksheet filings, USAC concluded that the Company's Annual Worksheet filings for 2017 through 2022 were inaccurate.[187] USAC provided Enhanced guidance on the inaccuracies in the 2017 through 2022 Annual Worksheets, and directed Enhanced to file revised Worksheets.[188] Enhanced filed the revisions on April 5, 2023.[189] USAC, however, rejected each of Enhanced's revised filings because the Company's documentation did not support Enhanced's reported revenues.[190] We therefore conclude that Enhanced apparently willfully

(Continued from previous page)
FCC Rcd 426, 448; *2018 Annual Worksheet Instructions*, *supra* note 10, 33 FCC Rcd 1801; *2017 Annual Worksheet Instructions*, *supra* note 10, 32 FCC Rcd 1238.

[182] *See* 47 U.S.C. §§ 225(b)(1)–(2), 251(b)(2), (e), 254(a)(2).

[183] *See id.* §§ 225(d)(3), 251(e)(2), 254(d).

[184] *See* 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

[185] Although some providers might not need to contribute to each fund and cost recovery mechanism, all service providers must file Annual Worksheets. *See, e.g.*, *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd at 14191-92.

[186] *See* 47 CFR § 1.1154; *see also* 47 U.S.C. § 159(a) (authorizing the Commission to collect annual regulatory fees to recover the costs of carrying out the functions of the Commission); *id.* § 156(a).

[187] As discussed above, the Company provided documentation with its LOI Response that enabled USAC to analyze the accuracy of the Company's Annual Worksheets for 2019 through 2021. On September 23, 2022, USAC requested documentation from the Company concerning Enhanced Communications' Annual Worksheets for 2017 through 2019, and the Company provided the documentation on October 7, 2022. On October 18, 2022, USAC requested additional documentation, which the Company provided on October 20, 2022, and which finally enabled USAC to complete the process of verifying the Annual Worksheets for 2017 through 2022.

[188] April 2023 USAC Letter, *supra* note 49, at 9. Enhanced acknowledged in its LOI response that it filed inaccurate Annual Worksheets for 2020 through 2022, and therefore submitted revised filings on June 3, 2022. Revised LOI Response, *supra* note 44, at 12, Response to Question 20 ("based upon USAC's previous review of [Enhanced]'s 499-As and [Enhanced]'s recategorizing of its revenues, [Enhanced] will be submitting, before June 3, 2022, revised 499-As for the period of 2019, 2020 and 2021"). However, USAC rejected the June 3, 2022 revised filings because the filings were also inaccurate. April 2023 USAC Letter, *supra* note 49, at 7.

[189] *Id.* at 9.

[190] June 2023 USAC Letter, *supra* note 159, at 1. USAC observed that Enhanced apparently moved revenues previously reported inaccurately as reseller revenues on Line 309 to Line 418.3, which includes non-telecommunications revenues that are not subject to USF contribution assessments. However, USAC determined that Enhanced should have reported a portion of the revenues on Line 409, which includes mobile services revenues that are subject to USF contributions. For the 2020 through 2022 Annual Worksheets, Enhanced also continued to misapply the Safe Harbor rate of 37.1% to Line 414.1. *Id.*; *see also, e.g.*, *2021 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd at 13720-23 (discussing use of safe harbor percentages and traffic studies for reporting interstate and international revenues).

and repeatedly violated sections 1.1154, 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by failing to file accurate Annual Worksheets for 2017 through 2022, including the six revised filings for 2017 through 2022 submitted on April 5, 2023.[191]

IV. PROPOSED FORFEITURE

47. 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[.]"[192] Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against Enhanced 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.[193] 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."[194] 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.[195] 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."[196]

48. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.[197] 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.[198] 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.[199]

49. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if

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[191] *See* 47 U.S.C. §§ 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, *supra* note 10, 34 FCC Rcd 426, 448; *2018 Annual Worksheet Instructions*, *supra* note 10, 33 FCC Rcd 1801; *2017 Annual Worksheet Instructions*, *supra* note 10, 32 FCC Rcd 1238.

[192] 47 U.S.C. § 503(b).

[193] *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 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).

[194] 47 U.S.C. § 503(b)(2)(E).

[195] 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

[196] *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).

[197] *See 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

[198] 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10). *See also 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

[199] 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

"the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."[200] In this case, we propose forfeitures for the Company's apparent failures (a) to submit timely and complete responses to USAC's directives to provide supporting documentation by the April 20, May 17, and August 7 and 24, 2022 response deadlines, and (b) to file accurate Annual Worksheets for 2017 through 2022, which Enhanced filed on April 5, 2023.[201]

A. Failure to Cooperate with USAC Verification Functions

50. As the Commission observed in another USF enforcement action,[202] "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."[203] 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 thus ensure compliance with the Commission's contributions requirements.[204] The Commission has previously imposed a $50,000 base forfeiture for a service provider's failure under section 54.711(a) of the Commission's rules to maintain documentation that supports revenues reported in Worksheets, and provide it to USAC upon request.[205] We thus propose a $200,000 base forfeiture against the Company for four failures to submit timely and complete responses to USAC's directives by the April 20, May 17, and August 7 and 24, 2022, response deadlines.

51. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with USAC's verification functions to be very serious.[206] USAC's verification of Worksheets through supporting documentation, and USAC's ability to audit a service provider that files Worksheets, are vital components of ensuring the integrity of the USF. We have also considered the degree of the Company's culpability.[207] Contributors have an important obligation to comply with USAC verification functions, and the Company is thus highly culpable for the consistent failures to respond to USAC verification directives, which were repeated in this case over multiple years. We find that Enhanced's failures to comply with documentation directives by April 30, and May 27, 2021, during USAC's attempted audit, constitute egregious misconduct.

52. Section 1.80 of the Commission's rules provides for an upward adjustment to forfeiture amounts for prior violations of any FCC requirements and for repeated or continuous violations.[208] As the

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[200] 47 U.S.C. § 503(b)(6)(B).

[201] Enhanced and the Commission agreed to toll the one-year statute of limitations for 90 days. *See* Tolling Agreement, *supra* note 150. The statute of limitations for the earliest of these apparent violations, which occurred on April 20, 2022, therefore expires on July 19, 2023.

[202] *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*).

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

[204] *See Federal-State Board on Universal Serv.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971, para. 34 & n.99 (2002) (noting that "persons willfully making false statements in the Worksheets can be punished by fine or imprisonment under title 18 of the United States Code, and citing 18 U.S.C. § 1001) (*2002 Report and Order and Second Further Notice of Proposed Rulemaking*).

[205] *See PayG NAL*, *supra* note 164, at *12, para. 37*; see also US South NAL*, *supra* note 164, 35 FCC Rcd at 12676, para. 22; *Compu-Phone NAL*, *supra* note 164, 35 FCC Rcd at 6583, para. 23; *Blue Casa NAL*, *supra* note 164, 35 FCC Rcd at 6344, para. 25.

[206] *See* 47 U.S.C. § 503(b)(2)(E).

[207] *See id.*

[208] 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

Commission has previously stated,[209] given the accumulating record of non-compliance with section 54.711(a) of the Commission's rules, service providers contemplating failures to comply with the requirements of the rule have been on notice that we are prepared to impose higher upward adjustments in future enforcement actions for prior violations and for repeated or continuous violations. Although 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,[210] Enhanced nonetheless repeatedly violated the documentation requirements and prevented USAC from verifying the accuracy of their Worksheets for nearly five and a half years.[211] In this case, we therefore apply an upward adjustment of $200,000, or 100 percent of the proposed base forfeiture, because of the repeated nature of the Company's apparent violations.[212]

53. We propose a forfeiture of $400,000 against the Company, which includes a $200,000 base forfeiture for Enhanced's failures to comply with USAC's four documentation directives by the deadlines established on April 20, May 17, and August 7 and 24, 2022, and an upward adjustment of $200,000 for the repeated nature of the documentation violations, including 17 separate violations between March 29, 2017, and August 24, 2022.

54. Section 1.80 of the Commission's rules provides for upward adjustments to proposed forfeiture amounts for egregious misconduct. A service provider's failure to comply with USAC document production directives during an audit is particularly egregious misconduct that demonstrates a blatant disregard for the reporting, documentation retention and production, and contribution requirements established by the FCC pursuant to the Act. Service providers contemplating failures to cooperate with documentation requirements during an audit by USAC are on notice that we are prepared to impose upward adjustments and assess the statutory maximum forfeiture authorized under the Act for each violation.[213] Currently, the Act authorizes the Commission to assess forfeitures of $237,268 for each violation under section 503(b)(2)(B) of the Act,[214] 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).[215]

B. Failure to File Accurate Worksheets

55. Section 1.80 of the Commission's rules lists a base forfeiture of $3,000 for the failure to file required forms or information.[216] Given the importance of the Worksheet filing requirements, the Commission has consistently applied an upward adjustment and proposed a forfeiture of $50,000 for each

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[209] *E.g.*, Conquest Operator Servs. Corp., Order of Forfeiture, 14 FCC Rcd 12518, 12528, para. 20 (1999) (forfeiture paid).

[210] *See supra* note 164 and accompanying text.

[211] *See* April 2023 USAC Letter, *supra* note 49.

[212] *See PayG NAL*, *supra* note 164, at *12, para. 38; *see also Correct Solutions NAL*, *supra* note 164, at *8, para. 26 (providing notice of future upward adjustments of 100 percent or more of the $50,000 base forfeiture for repeated or continuous violations of section 54.711(a) of the Commission's rules).

[213] *See* 47 U.S.C. § 503(b)(2).

[214] *Id.* § 503(b)(2)(B).

[215] 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.

[216] 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

failure of a service provider to file timely or accurate Worksheets.[217] However, given the accumulating record of non-compliance with the requirements to file accurate Worksheets by each filing deadline, service providers failing to comply with these requirements have been provided notice that the Commission could impose substantially higher upward adjustments for prior violations and for repeated or continuous violations.[218] Enforcement actions for the failure to file timely or accurate Worksheets can include upward adjustments up to the statutory maximum forfeiture authorized under section 503(b)(2) of the Act.[219] In this case, we propose a forfeiture of $600,000 for the Company's repeated failures to file accurate Annual Worksheets, which represents a $100,000 forfeiture for each of the six inaccurate Annual Worksheet filings for 2017 through 2022, which Enhanced filed on April 5, 2023.[220]

56. In assessing a forfeiture amount, we consider the nature, extent, and gravity of the failure to comply with the Worksheet filing requirements to be very serious.[221] The administrators of the USF, TRS Fund, LNP, NANP, and federal regulatory fees rely on the data reported in Worksheets to determine accurate amounts that service providers owe for these important funding mechanisms arising under the Act.[222] Enhanced's failures to file accurate Annual Worksheets each year for 2017 through 2022 had serious implications for the administration of these funding mechanisms. The ability of the administrators to assess accurate USF, TRS Fund, LNP, and NANP, and federal regulatory fee payment requirements depends on every service provider's compliance with the obligation to file accurate Worksheets by each filing deadline. A service provider's failure to file accurate Worksheets impedes the Congressional mandate that each service provider contribute on an equitable and nondiscriminatory basis to the USF,[223] and to these other important cost recovery requirements arising under the Act. We have also considered the degree of the Company's culpability.[224] The Company has an important obligation to file accurate Worksheets by each annual filing deadline, and Enhanced repeatedly failed to comply for six years. The Company is thus highly culpable for the repeated filing failures. We therefore propose a forfeiture of $600,000 for the Company's failures to file six accurate Annual Worksheets.

C. Total Proposed Forfeiture

57. Consistent with the Act and the Commission's rules,[225] 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 dollars ($1,000,000). The total proposed forfeiture includes a forfeiture of (a) four hundred thousand dollars ($400,000) for the Company's failures to respond to USAC directives to provide documentation supporting Enhanced's Annual Worksheets; and (b) six hundred thousand dollars ($600,000) for the Company's failures to file accurate Worksheets.

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[217] *E.g.*, *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011); *Globcom Forfeiture Order*, *supra* note 202, 21 FCC Rcd at 4720-21, 4727, paras. 26-28, 31, 45.

[218] *E.g.*, *PayG NAL*, *supra* note 164, at *13, para. 41 (providing notice of upward adjustments as high as the statutory maximum forfeiture for prior violations and for repeated or continuous violations); *Correct Solutions NAL*, *supra* note 164, at *8, para. 26 (providing notice of future upward adjustments to $100,000 or more).

[219] *See* 47 U.S.C. § 503(b)(2); *PayG NAL*, *supra* note 164, at *13, para. 41.

[220] *See PayG NAL*, *supra* note 164, at *13, para. 41; *Correct Solutions NAL*, *supra* note 164, at *8, para. 26.

[221] *See* 47 U.S.C. § 503(b)(2)(E).

[222] *See* 47 CFR §§ 1.1154, 52.17, 52.32, 54.711, 64.604(c)(5)(iii).

[223] *See* 47 U.S.C. § 254(d).

[224] *See id.* § 503(b)(2)(E).

[225] *See id.*; 47 CFR § 1.80(b)(10), Tbl. 3 to Paragraph (b)(10).

V. CONCLUSION

58. We have determined that Enhanced apparently willfully and repeatedly violated sections 251(e)(2) and 254(d) of the Act,[226] sections 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B) of the Commission's rules,[227] and Commission orders issued pursuant to section 254(d) of the Act,[228] by failing to respond to USAC documentation directives and to file accurate Annual Worksheets. As such, Enhanced is apparently liable for a forfeiture of $1,000,000.[229]

VI. ORDERING CLAUSES

59. 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, Enhanced Communications Group, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one million dollars ($1,000,000) 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), sections 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B) of the Commission's rules, 47 CFR §§ 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and Commission orders issued pursuant to section 254(d) of the Act, 47 U.S.C. § 254(d).[230]

60. **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 and Order, Enhanced Communications Group, 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 63 below.

61. In order for Enhanced Communications Group, LLC to pay the proposed forfeiture, Enhanced Communications Group, LLC shall notify Patrick McGrath, Kalun Lee, Georgina Feigen, David Janas, and Jeffrey Brown at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, Jeffrey.Brown@fcc.gov, and EnforcementBureauIHD@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, Enhanced Communications Group, LLC shall send electronic notification of payment to Patrick McGrath, Kalun Lee, Georgina Feigen, David Janas and Jeffrey Brown, Enforcement Bureau, Federal Communications Commission, at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, Jeffrey.Brown@fcc.gov, and EnforcementBureauIHD@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

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[226] *Id*. §§ 251(e)(2), 254(d).

[227] 47 CFR §§ 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

[228] *See 2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, *supra* note 10, 34 FCC Rcd 426, 448; *2018 Annual Worksheet Instructions*, *supra* note 10, 33 FCC Rcd 1801; *2017 Annual Worksheet Instructions*, *supra* note 10, 32 FCC Rcd 1238.

[229] 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.

[230] *See 2022 Annual Worksheet Instructions*, *supra* note 2, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, *supra* note 10, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, *supra* note 10, 34 FCC Rcd at 448; *2018 Annual Worksheet Instructions*, *supra* note 10, 33 FCC Rcd 1801; *2017 Annual Worksheet Instructions*, *supra* note 10, 32 FCC Rcd 1238.

selected:[231]

- 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[232] or printed CORES form[233] 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).[234] 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 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.

62. 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.[235] 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.

63. 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

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

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

[233] 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.

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

[235] *See* 47 CFR § 1.1914.

to sections 1.16 and 1.80(f)(3) of the Commission's rules.[236] 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 & Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, Jeffrey.Brown@fcc.gov, and EnforcementBureauIHD@fcc.gov.

64. 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.[237] 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.[238]

65. **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 Jeff Holley, Chief Executive Officer, Enhanced Communications Group, LLC, 312 SE Delaware Avenue, Bartlesville, OK 74003, and by e-mail to jeff.holley@boom.us.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[236] 47 CFR §§ 1.16, 1.80(f)(3).

[237] 47 U.S.C. § 503(b)(2)(E).

[238] *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 Commc'ns, 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).